

# **EXHIBIT A**

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION Case no. 4:23-CV-00193-D</p> <p>RODNEY D. PIERCE and MOSES ) MATTHEWS, )  ) Plaintiffs, )  ) vs. )  ) THE NORTH CAROLINA STATE ) BOARD OF ELECTIONS, et al., )  ) Defendants. )</p> <p style="text-align: center;">REMOTE VIA ZOOM</p> <p style="text-align: center;">DEPOSITION OF DR. JOHN ALFORD</p> <hr/> <p style="text-align: center;">10:11 A.M.</p> <p style="text-align: center;">THURSDAY, SEPTEMBER 19, 2024</p> <hr/> <p>By: Denise Myers Byrd, CSR 8340, RPR</p>	<p>1 The Reporter: Discovery Court Reporters and Legal Videographers, LLC 2 BY: DENISE MYERS BYRD, CSR 8340 4208 Six Forks Road 3 Suite 1000 Raleigh, NC 27609 4 (919) 424-8242 (919) 649-9998 Direct 5 Denise@DiscoveryDepo.com 6 --o0o-- 7 8 9 INDEX OF EXAMINATION Page 10 11 By Attorney Theodore..... 5 12 13 --o0o-- 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">3</p>
<p>1 APPEARANCES 2 3 For the Plaintiffs: 4 ARNOLD &amp; PORTER BY: ELISABETH S. THEODORE, ESQ. 5 601 Massachusetts Avenue, NW Washington, DC 20001-3743 6 (202) 942-5000 Elisabeth.Theodore@arnoldporter.com 7 8 POYNER SPRUILL BY: CAROLINA MACKIE, ESQ. PO Box 1801 9 Raleigh, NC 27602-1801 (919) 783-6400 10 CMackie@poynerspruill.com 11 12 For the Defendants: 13 BAKER &amp; HOSTETLER BY: KATHERINE MCKNIGHT, ESQ. ERICA PROUTY, ESQ. 14 1050 Connecticut Avenue, NW Suite 1100 15 Washington, DC 20036 (202) 861-1500 16 KMCKnight@bakerlaw.com EProuty@bakerlaw.com 17 18 NELSON MULLINS BY: ALYSSA RIGGINS, ESQ. JORDAN KOONTs, ESQ. 19 301 Hillsborough Street Suite 1400 20 Raleigh, NC 27603 (919) 329-3800 21 Alyssa.Riggins@nelsonmullins.com Jordan.Koonts@nelsonmullins.com 22 23 24 25</p> <p style="text-align: right;">2</p>	<p>1 INDEX OF EXHIBITS 2 Exhibit Page 3 1 Expert Report of John Alford, Ph.D. 9 4 2 Expert Report of Dr. Loren Collingwood 52 5 3 Deposition of John Alford, 12/13/2023 Mississippi State Conference of NAACP 6 v State Board of Elections 58 7 4 Alford Replication Materials 97 8 5 Alford Replication Readme 98 9 6 Affidavit of Direct Examination of Dr. John Alford, NAACP v East Ramapo 10 Central School District 111 11 7 Expert Rebuttal of Dr. Loren Collingwood 202 12 8 Expert Report of Dr. John Alford, Johnson v Wisconsin Elections Commission 232 13 14 9 Expert Report of Dr. John Alford, 11/2/2022, Soto Palmer v Hobbs 236 15 --o0o-- 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">4</p>

<p>1 DR. JOHN ALFORD, 2 having been first duly sworn or affirmed by the 3 Certified Shorthand Reporter and Notary Public 4 to tell the truth, the whole truth and nothing 5 but the truth, testified as follows: 6 EXAMINATION 7 ATTORNEY THEODORE: 8 Q. Good morning, Dr. Alford. My name is Elisabeth 9 Theodore from the law firm of Arnold &amp; Porter, 10 and I represent the plaintiffs in this case. 11 Can you please state your full name for 12 the record. 13 A. Yes. It's John Richard Alford. 14 Q. Thank you. You've been deposed a number of 15 times before, correct? 16 A. I have. 17 Q. Approximately how many times? 18 A. Certainly more than 50 times. At some point I 19 thought I would count all that up, but I got 20 exhausted and gave up, but more than 50 times. 21 Q. All right. And you've done a Zoom deposition 22 before. 23 A. I have. 24 Q. All right. And you understand the importance of 25 trying not to talk over each other. I'll try</p> <p style="text-align: right;">5</p>	<p>1 your report and Dr. Collingwood's reports? 2 A. I don't believe so, no. 3 Q. Okay. Did you bring any documents or notes with 4 you to this deposition? 5 A. I have been provided with a clean copy of my 6 report, and that's all I have. 7 Q. Okay. Do you have anything up on your screen 8 besides the Zoom window? 9 A. It's actually not -- it's not my screen, but 10 there's nothing but a Zoom window. It's not my 11 laptop. 12 Q. There's no documents up on that laptop that's in 13 front of you? 14 A. That's correct. 15 Q. Where do you live currently? 16 A. I live at 15907 Erin Creek Court in Houston, 17 Texas. 18 Q. Have you ever lived in North Carolina? 19 A. I have not. 20 Q. Have you ever been to North Carolina? 21 A. I have been to North Carolina various times from 22 when I was young to more recently we've 23 spent -- recently spent a couple of family 24 vacations in North Carolina at Airbnb 25 residences.</p> <p style="text-align: right;">7</p>
<p>1 not to interrupt you, and I ask that you wait 2 until my questions are done before answering. 3 Is that fair? 4 A. Yes. 5 Q. Okay. And you understand that if your counsel 6 objects, you must answer the question unless 7 your counsel specifically instructs you not to 8 answer the question, correct? 9 A. Yes. 10 Q. All right. Any reason you couldn't give 11 complete, accurate, and truthful testimony 12 today? 13 A. No. 14 Q. All right. And if you want a break, just let me 15 know, but I would just ask that you not take any 16 breaks in the middle of the question. Is that 17 fair? 18 A. That's fair. 19 Q. Okay. What did you do to prepare for this 20 deposition? 21 A. I looked over the various materials. I looked 22 over my reports in the case. I looked at 23 Dr. Collingwood's reports. I had discussion 24 with the lawyers. 25 Q. Did you review any other expert reports besides</p> <p style="text-align: right;">6</p>	<p>1 Actually, the University of North 2 Carolina was -- there were two schools I 3 considered for graduate school, University of 4 Iowa and University of North Carolina, and came 5 very close to going to North Carolina for my 6 graduate training, ended up at -- ended up at 7 Iowa. So I have some affinity for 8 North Carolina. And I've been various, you 9 know, over the years conferences, those sorts of 10 things, but I've never -- I've never lived 11 there, and I don't think I've ever been involved 12 in any other business kinds of things related to 13 North Carolina. 14 Q. And business would include your work on racially 15 polarized voting and the VRA; is that right? 16 A. Yeah. I don't -- I'm trying to think of 17 what -- if I've been involved in anything prior 18 to this. Nothing comes to mind. 19 But, yeah, broadly, most of my time 20 spent in North Carolina has been more likely 21 related to vacation than to business. 22 Q. Okay. And where are you currently employed? 23 A. I am employed at Rice University in Houston, 24 Texas. 25 Q. And you teach political science there; is that</p> <p style="text-align: right;">8</p>

<p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And what courses are you currently teaching?</p> <p>4 A. This semester I'm teaching a course called</p> <p>5 Election 2024 that deals with voting behavior</p> <p>6 and structural issues in the 2024 election, and</p> <p>7 I'm teaching Introduction to American Politics.</p> <p>8 Q. All right. And I am going to go ahead and drop</p> <p>9 in the chat what I'm going to mark as Exhibit 1</p> <p>10 which is your expert report in this case.</p> <p>11 (WHEREUPON, Plaintiff's Exhibit 1 was</p> <p>12 marked for identification.)</p> <p>13 BY ATTORNEY THEODORE:</p> <p>14 Q. Do you recognize this document?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And you can feel free to refer to the</p> <p>17 print copy that you have if you prefer.</p> <p>18 A. Thank you.</p> <p>19 Q. And if you scroll to page 31 of the PDF, do you</p> <p>20 see your c.v. there?</p> <p>21 A. Yes.</p> <p>22 Q. And can you confirm, this is an current and</p> <p>23 accurate copy of your c.v.?</p> <p>24 A. It is.</p> <p>25 Q. Are there any new expert engagements since you</p> <p style="text-align: right;">9</p>	<p>1 Have you ever published any academic</p> <p>2 work that relates specifically to North Carolina</p> <p>3 in any way?</p> <p>4 A. No.</p> <p>5 Q. All right. Have you ever published any academic</p> <p>6 work about the Voting Rights Act?</p> <p>7 A. No.</p> <p>8 Q. Have you ever published any academic work on</p> <p>9 racially polarized voting?</p> <p>10 A. No.</p> <p>11 Q. Have you ever published any academic work about</p> <p>12 use of the ecological inference method?</p> <p>13 A. No.</p> <p>14 Q. Have you ever published any academic work using</p> <p>15 the ecological inference method as a</p> <p>16 methodology?</p> <p>17 A. I don't think so, no.</p> <p>18 Q. All right. And when I say ecological inference,</p> <p>19 I'm referring to sort of all the variations of</p> <p>20 ecological inference. Is that fair?</p> <p>21 A. Yes, that's fair.</p> <p>22 Q. And that doesn't change your answer?</p> <p>23 A. No.</p> <p>24 Q. Okay. Have you ever published any academic work</p> <p>25 about the use of statistics in the context of</p> <p style="text-align: right;">11</p>
<p>1 sent us this c.v. in August 2024?</p> <p>2 A. Yes. I believe there are two -- there are two</p> <p>3 things that I engaged in that I don't see here,</p> <p>4 at least in the front part.</p> <p>5 So I've been engaged as an expert on a</p> <p>6 school board case. I don't know the case name,</p> <p>7 but it's the Dumas, D-U-M-A-S, Independent</p> <p>8 School District in West Texas, and that's a VRA</p> <p>9 lawsuit against the school district.</p> <p>10 Q. A Section 2 lawsuit?</p> <p>11 A. Yes.</p> <p>12 Q. And what's the second one that you wanted to</p> <p>13 add?</p> <p>14 A. Oh, I'm working as a consulting expert on -- for</p> <p>15 the State of Arkansas.</p> <p>16 Q. Is that also on VRA Section 2 issues?</p> <p>17 A. It's not. So part of the reason I'm consulting,</p> <p>18 I guess, and not actually a testifying expert,</p> <p>19 it's not -- at least my recollection at this</p> <p>20 point, it's a constitutional challenge about</p> <p>21 minority -- sort of cracking of minority votes</p> <p>22 related to the congressional redistricting,</p> <p>23 specifically to the division of section of</p> <p>24 Pulaski County in the congressional plan.</p> <p>25 Q. Thank you. Okay.</p> <p style="text-align: right;">10</p>	<p>1 redistricting or the Voting Rights Act?</p> <p>2 A. I don't think so, no.</p> <p>3 Q. Have you ever taught a statistics course?</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever performed a regression in your</p> <p>6 academic work?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Have you ever taught any courses on</p> <p>9 minority politics or voting behavior?</p> <p>10 A. Specifically minority politics in voting</p> <p>11 behavior, no.</p> <p>12 Q. Have you ever published any academic work on the</p> <p>13 voting patterns of black voters in the</p> <p>14 United States or in any part of the</p> <p>15 United States?</p> <p>16 A. I published work on voting but not specifically</p> <p>17 on voting patterns of black voters in the</p> <p>18 United States, no.</p> <p>19 Q. Okay. Have you ever published any academic work</p> <p>20 on racial politics?</p> <p>21 A. No.</p> <p>22 Q. Did you consider yourself to be an expert in the</p> <p>23 area of racial politics?</p> <p>24 A. As it's defined as a subfield in American</p> <p>25 politics, no.</p> <p style="text-align: right;">12</p>

<p>1 Q. Do you consider yourself to be an expert in the</p> <p>2 are of minority voting behavior?</p> <p>3 A. As an academic subfield, no.</p> <p>4 Q. Do you teach about the Voting Rights Act in your</p> <p>5 classes?</p> <p>6 A. Yes. The Voting Rights Act would be something</p> <p>7 that would come up. I taught a course on</p> <p>8 redistricting. It certainly was something that</p> <p>9 came up in that context, comes up in</p> <p>10 Introduction to American Politics possibly. I</p> <p>11 teach a course on elections and voting behavior,</p> <p>12 probably comes up in that course, some context.</p> <p>13 Q. And you answered earlier, I think, you don't</p> <p>14 recall ever previously serving as an expert</p> <p>15 witness in a case involving North Carolina,</p> <p>16 correct?</p> <p>17 A. I think one way or another I've been involved in</p> <p>18 something now getting close to 100 cases over</p> <p>19 39 years, so I can tell you what -- with some</p> <p>20 accuracy what I've been doing in the last couple</p> <p>21 of years, but what I was doing -- whether I was</p> <p>22 involved in a North Carolina case, state or</p> <p>23 local, in the '80s or '90s, I have no idea.</p> <p>24 Q. All right. But nothing comes to mind. You</p> <p>25 can't think of anything in the last -- you know,</p> <p style="text-align: right;">13</p>	<p>1 informs this work and work on the elections for</p> <p>2 this case and what I think was a parallel case,</p> <p>3 that's what I would say reflect my expertise as</p> <p>4 relevant to this case.</p> <p>5 Q. All right. For purposes of conducting your work</p> <p>6 in this case, you applied the standard</p> <p>7 methodology that you apply sort of regardless of</p> <p>8 whether a case involves North Carolina or some</p> <p>9 other region. Is that fair to say?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And you didn't -- you didn't rely when</p> <p>12 you were preparing your expert report in this</p> <p>13 case on any specific expertise regarding</p> <p>14 North Carolina based on your past work; is that</p> <p>15 correct?</p> <p>16 A. I mean, I certainly think -- I can't help but</p> <p>17 think of North Carolina in that comparative</p> <p>18 context sort of where it would fit relative to</p> <p>19 other states or entities that I've been involved</p> <p>20 with, but I'm not applying any sort of specific</p> <p>21 sort of state politics expertise to my analysis.</p> <p>22 Q. Okay. And you don't have any experience or</p> <p>23 expertise in North Carolina state politics or</p> <p>24 state elections in particular. Is that fair to</p> <p>25 say?</p> <p style="text-align: right;">15</p>
<p>1 in the last 20 years?</p> <p>2 A. Not off the top of my head.</p> <p>3 Q. All right. Do you believe that you have any</p> <p>4 particular expertise regarding North Carolina?</p> <p>5 A. Just to be clear -- at least I think I'm right</p> <p>6 about this, but there are two separate</p> <p>7 North Carolina cases now; is that correct? I'm</p> <p>8 in both of them, so I guess technically I'm</p> <p>9 involved, but prior to this round, I don't</p> <p>10 recall being involved.</p> <p>11 Q. Thanks for the clarification.</p> <p>12 Do you believe that you have any</p> <p>13 particular expertise regarding North Carolina?</p> <p>14 A. Well, certainly -- well, yes, that's reflected</p> <p>15 in my report. So I've done analysis here on a</p> <p>16 fairly large set of recent North Carolina</p> <p>17 elections so I think I know something and have</p> <p>18 something to share with the court about current</p> <p>19 elections in North Carolina.</p> <p>20 Q. All right. And that's based on your work in</p> <p>21 this report, correct?</p> <p>22 A. My work in this report more broadly and my work</p> <p>23 over almost 40 years now on issues related to</p> <p>24 the Voting Rights Act and to redistricting and</p> <p>25 to elections, so although work in other cases</p> <p style="text-align: right;">14</p>	<p>1 A. Beyond what I've done in the reporting in this</p> <p>2 case, no, I have no -- I'm not an expert on</p> <p>3 North Carolina state politics in that</p> <p>4 substantive sense.</p> <p>5 Q. Has your testimony ever been excluded by a</p> <p>6 court?</p> <p>7 A. It's certainly been misliked but never excluded.</p> <p>8 Q. All right. And we'll get to the "misliked" a</p> <p>9 little bit later.</p> <p>10 Have you ever been an expert on behalf</p> <p>11 of a plaintiff in a Section 2 case?</p> <p>12 A. I have been an expert for plaintiffs. I'm not</p> <p>13 sure exactly how to characterize the particular</p> <p>14 cases. I was -- served as an expert for I guess</p> <p>15 some Texas Democratic congressmen led by Martin</p> <p>16 Frost in a suit against the State of Texas; also</p> <p>17 for some Democratic congressman in Florida; also</p> <p>18 I think involved in congressional redistricting</p> <p>19 in Florida. Those are the two cases that come</p> <p>20 to mind.</p> <p>21 Q. Do you recall approximately when those cases</p> <p>22 were?</p> <p>23 A. The Texas case would have been, oh, sort</p> <p>24 of -- sometime mid decade following the -- in</p> <p>25 the 2000 redistricting, I think, and Florida</p> <p style="text-align: right;">16</p>

<p>1 maybe in that same time period.</p> <p>2 Q. Do you recall the name of the Florida case?</p> <p>3 A. I don't. I could -- if you would like me to dig</p> <p>4 it out. I think it's somewhere in my old files</p> <p>5 somewhere I think I've got some reference to it,</p> <p>6 but it concerned the -- it was relative to -- if</p> <p>7 I'm remembering correctly related to</p> <p>8 congressional districts in south Florida, I</p> <p>9 think related to Hispanic voters in south</p> <p>10 Florida both in the area of -- sort of eastern</p> <p>11 area of Miami.</p> <p>12 Q. Have you ever served as an expert on behalf of a</p> <p>13 government entity contending that the government</p> <p>14 entity was justified in creating a</p> <p>15 majority-minority district or a minority</p> <p>16 opportunity district?</p> <p>17 A. Yes.</p> <p>18 Q. What cases are those?</p> <p>19 A. I'm just thinking recently, I was an expert for</p> <p>20 the City of Miami in defending their city</p> <p>21 council district plan.</p> <p>22 I was an expert for the State of</p> <p>23 Washington, defending their current -- I can't</p> <p>24 remember whether it was -- it was probably state</p> <p>25 senate plan maybe. I'm not really sure.</p> <p style="text-align: right;">17</p>	<p>1 I never sought out employment in this</p> <p>2 area in the entire time I've been doing it, so</p> <p>3 people come to me and ask me to work on a case,</p> <p>4 and if it's something I can be helpful to them,</p> <p>5 I work on the case. As it happens, that's</p> <p>6 mostly entities partly again because that's how</p> <p>7 I got started and partly because at the local</p> <p>8 level, I draw district plans for entities and so</p> <p>9 they are often asking me to defend their plans.</p> <p>10 When I'm approached by an entity to do</p> <p>11 some analysis that's related to either a</p> <p>12 potential legal suit or an existing legal suit,</p> <p>13 I do my analysis and share that. Oftentimes I'm</p> <p>14 hired as a consulting expert. If what I find is</p> <p>15 something that wouldn't be helpful to their</p> <p>16 position in defending the lawsuit, I share that</p> <p>17 with them and then that's sort of that.</p> <p>18 I guess it doesn't surprise me much</p> <p>19 that if what I find is not helpful that I'm then</p> <p>20 not actually a testifying expert for the entity.</p> <p>21 So where an entity actually, you know, follows</p> <p>22 through and has me as a testifying expert, it's</p> <p>23 because my analysis they believe is helpful to</p> <p>24 them. I've done analysis that is not helpful as</p> <p>25 a consulting expert and then I've not been asked</p> <p style="text-align: right;">19</p>
<p>1 Q. Is that the Soto Palmer case that you're talking</p> <p>2 about in Washington?</p> <p>3 A. Yes.</p> <p>4 Q. Do any others come to mind besides the City of</p> <p>5 Miami and the Washington case?</p> <p>6 A. That's what comes to mind. I sort of -- you</p> <p>7 know, I have enough recent stuff that it tends</p> <p>8 to crowd out stuff from earlier eras. Those are</p> <p>9 the ones that are in the last four or five years</p> <p>10 that come to mind.</p> <p>11 Q. Have you ever taken a position in any expert</p> <p>12 report or expert work that a VRA district was</p> <p>13 required in a particular instance?</p> <p>14 A. So when I'm hired by -- so for whatever reason,</p> <p>15 mostly accidental, I think, I started out</p> <p>16 working for entities and then, you know, you</p> <p>17 get -- and then entities hire you, so I guess I</p> <p>18 have lots of old friends and some new friends on</p> <p>19 the plaintiff side. And we always joke about,</p> <p>20 you know, why I'm not working for them, and I</p> <p>21 said, "Well, because you don't hire me." And,</p> <p>22 you know, I don't think it's entirely ideal, but</p> <p>23 it is the way it works, right, people end up</p> <p>24 testifying on one side or the other and that's</p> <p>25 who calls.</p> <p style="text-align: right;">18</p>	<p>1 to testify.</p> <p>2 Q. All right. And just specifically, though, have</p> <p>3 you ever taken any position -- have you ever</p> <p>4 taken a position in expert work or an expert</p> <p>5 report that's public that a VRA district was</p> <p>6 required in a particular instance?</p> <p>7 ATTORNEY McKNIGHT: Objection; form.</p> <p>8 THE WITNESS: Well, I think that's -- I</p> <p>9 mean, I've been associated with lawyers, I</p> <p>10 guess, for taking all sorts of positions. I</p> <p>11 don't really -- I don't think of my work as</p> <p>12 being -- making a conclusion about what the VRA</p> <p>13 requires or doesn't require.</p> <p>14 So I certainly have advised numerous</p> <p>15 entities over the years that they are</p> <p>16 definitely, you know, subject to -- likely to</p> <p>17 be -- if they haven't already been sued, they</p> <p>18 probably will be sued. If they have been sued</p> <p>19 that I don't think they're likely to prevail.</p> <p>20 I don't think that's -- that's not</p> <p>21 because I make a legal conclusion about whether</p> <p>22 they're -- whether they are required by the</p> <p>23 Voting Rights Act to do something or not</p> <p>24 required to do something, but just sort of</p> <p>25 realistically does the fact pattern look very</p> <p style="text-align: right;">20</p>

<p>1 positive for them or -- so, I mean, I have been 2 involved in cases where I was asked to simply 3 look at the demographics and I concluded that 4 you couldn't draw a majority district and so I 5 would tell the entity that I think it's unlikely 6 that they'll lose a VRA suit, although it 7 doesn't mean they won't lose it.</p> <p>8 I have cases I would say, yes, a 9 district could easily be drawn so you're 10 probably going to be sued and there's a chance, 11 you know, a lawsuit could go either way. But I 12 don't think I've ever myself specifically told a 13 district -- reached the sort of legal conclusion 14 that they were required by the Voting Rights Act 15 to do something.</p> <p>16 BY ATTORNEY THEODORE: 17 Q. Have you ever taken a position in any expert 18 work or any expert report that's public that the 19 three Gingles preconditions are satisfied in a 20 particular instance? 21 I'm just looking for any examples that 22 you can recall in public expert work where you 23 have taken the position that the three Gingles 24 preconditions were satisfied in a particular 25 instance.</p> <p style="text-align: right;">21</p>	<p>1 Q. Did you do in any of these cases any analysis of 2 Gingles Precondition 1 or any analysis of the 3 racial composition of a particular district in 4 any of the cases listed here on your c.v.? 5 ATTORNEY McKNIGHT: Objection; form. 6 THE WITNESS: I think I would have done 7 that in the -- or actually, I'm not sure. 8 BY ATTORNEY THEODORE: 9 Q. I'm sorry. In which case? 10 A. I'm sorry. Shafer v Pearland ISD. 11 I'm trying to remember because in some 12 of these cases there's a demographer hired 13 separately and in which case I try to stay out 14 of that. In Pearland -- there may be a 15 demographer in Pearland. 16 On page 13, the Elizondo v Spring 17 Branch ISD, I testified about the ability to 18 draw a Gingles one district. 19 I think in that set of -- going from 20 Houston Community College, Lone Star College, 21 Killeen, Houston ISD, Brazosport ISD, Dallas 22 ISD, all of those I think would have involved to 23 some degree the issue about drawing a district. 24 And then where I am consulting and 25 drawing districts Lancaster, City of Baytown,</p> <p style="text-align: right;">23</p>
<p>1 A. Again, not as a legal matter but just as a 2 factual matter, I think my testimony in 3 Washington state was that, you know, again, it 4 depends on how you -- how you treat that pattern 5 for Gingles purposes or for totality purposes, 6 whatever. 7 So if the question is are -- which is, 8 I think, as I understand from the plaintiffs' 9 experts, if the question is whether black and 10 white voters are voting differently in 11 elections, that question, then, I mean, yeah, 12 that is the question I think I was asked to 13 answer in Washington state, and my answer was 14 yes. In that case Hispanic and Anglo voters 15 were voting differently in elections. 16 Q. All right. Can you think of any example beside 17 Washington state? 18 A. I would have to -- I believe that would 19 be -- would be a fair characterization of my 20 testimony in the Miami case relative to black 21 and white voters. 22 Q. Okay. Let's turn back to your c.v. marked as 23 Exhibit 1 and turn to the page that has your 24 recent expert engagements. 25 A. Yes.</p> <p style="text-align: right;">22</p>	<p>1 Good Creek, obviously I'm drawing districts, so 2 that's all I was doing in the district. 3 You know, so Sarasota County, Florida, 4 I think to some degree would have been involved 5 in a district -- issue by district demographics, 6 but I'm not sure whether that was -- whether 7 there was a separate demographer or not. 8 And I think that's it. 9 Q. Okay. Thank you. 10 And in the cases that you list on this 11 c.v. where you describe yourself as a 12 consultant, was there any public report or 13 published report that described your work in any 14 of those cases? 15 A. I would say that I'm working for lawyers 16 representing those -- so two separate things. 17 One, I'm working with lawyers representing the 18 districts with regard to drawing districts or 19 supporting district plans, so I would provide 20 information to the lawyers. 21 In some of those cases, I think the 22 lawyers probably did something -- I don't think 23 there's anything published, but they would have 24 done a presentation at some point for the 25 governing body, but I don't think -- those cases</p> <p style="text-align: right;">24</p>



<p>1 where I'm drawing the districts, I would do a</p> <p>2 presentation to the board, say, in Lancaster</p> <p>3 about here are some ways to draw districts, but</p> <p>4 I don't think that would be a published report.</p> <p>5 It would be simply coming in and making a</p> <p>6 presentation for the board.</p> <p>7 Q. Okay. Thanks.</p> <p>8 All right. So your assignment -- you</p> <p>9 were retained by the defendants in this case,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. And your assignment was to respond to the</p> <p>13 analysis of Dr. Collingwood; is that correct?</p> <p>14 A. Initially to respond to the analysis of</p> <p>15 Dr. Barreto, and then when he was replaced with</p> <p>16 Dr. Collingwood, to respond to Dr. Collingwood.</p> <p>17 Q. All right. Have you reviewed the reports of</p> <p>18 Mr. Esselstyn, Dr. Burch or Dr. Mattingly?</p> <p>19 A. I have not.</p> <p>20 Q. And you haven't expressed any opinion about</p> <p>21 their reports or opinions in your own report,</p> <p>22 correct?</p> <p>23 A. I believe that's correct.</p> <p>24 Q. Let's return to Exhibit 1 which I already</p> <p>25 transmitted which is your August expert report.</p> <p style="text-align: right;">25</p>	<p>1 several cases. I just spent the last entire</p> <p>2 last week in trial on the Spring Branch case,</p> <p>3 writing a report right now in the other</p> <p>4 North Carolina case, testifying in the Miami</p> <p>5 case and the Florida case, so it's been</p> <p>6 busy -- continuing to work with Texas and</p> <p>7 Arkansas, so it's been a very busy time. And I</p> <p>8 couldn't tell you with any degree of accuracy</p> <p>9 how much of that -- my relative time is spent</p> <p>10 allocated to which of those tasks.</p> <p>11 Q. Let's turn to page 3 of your report. You see a</p> <p>12 section on Data and Sources?</p> <p>13 A. Yes.</p> <p>14 Q. And you state there you reviewed</p> <p>15 Dr. Collingwood's report, you relied on election</p> <p>16 and voter data from North Carolina, from the</p> <p>17 North Carolina State Board of Elections, and you</p> <p>18 relied on materials disclosed by Dr. Collingwood</p> <p>19 wood. Is that accurate?</p> <p>20 A. Yes, it is.</p> <p>21 Q. And you didn't rely on any other facts or data</p> <p>22 other than the ones listed in that Data and</p> <p>23 Sources paragraph in forming your opinions,</p> <p>24 correct?</p> <p>25 A. I'm not consulting or analyzing any other data</p> <p style="text-align: right;">27</p>
<p>1 You're not planning on offering</p> <p>2 independent on any topic that is not covered by</p> <p>3 this report, correct?</p> <p>4 A. I always find that to be an odd -- I don't</p> <p>5 think -- I don't know, an awkward question.</p> <p>6 I don't plan on offering anything</p> <p>7 beyond that, but I know from having spent some</p> <p>8 time as a witness in federal trials that at some</p> <p>9 point I'm almost always asked questions either</p> <p>10 by plaintiffs or by the judge that might be</p> <p>11 somewhere outside the scope of what's in the</p> <p>12 report, and I do my best if I can to answer</p> <p>13 those questions appropriately.</p> <p>14 So I don't -- at this stage, certainly</p> <p>15 going into court, you know, I plan to talk about</p> <p>16 my report. I always hope that's all I have to</p> <p>17 talk about, but there are occasions</p> <p>18 when -- particularly when judges ask questions</p> <p>19 that go beyond the scope of the report, and I do</p> <p>20 my best to answer those questions.</p> <p>21 Q. Do you recall approximately how many hours you</p> <p>22 spent preparing your August report?</p> <p>23 A. I have no idea.</p> <p>24 Q. Less than 50? More than 50?</p> <p>25 A. As you can see from this list, I'm involved in</p> <p style="text-align: right;">26</p>	<p>1 beyond that. You know, while I'm forming an</p> <p>2 opinion, I form the opinion based on everything</p> <p>3 that's ever happened to me in my life. I</p> <p>4 don't -- I can't divorce everything else that I</p> <p>5 know or everything else that I've been involved</p> <p>6 in or everything else I've analyzed, but for</p> <p>7 the -- for the empirical information provided</p> <p>8 here and the conclusions I draw from that</p> <p>9 information, this is the data and the sources.</p> <p>10 Q. Did you review Dr. Collingwood's code before</p> <p>11 writing your report?</p> <p>12 A. Yes, I looked at Dr. Collingwood's code.</p> <p>13 Q. And your report does not disclose any opinions</p> <p>14 about his code, correct?</p> <p>15 A. I don't think I made any comment about his code,</p> <p>16 correct.</p> <p>17 Q. You didn't include any criticisms of his code in</p> <p>18 your report, correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. And did you review Dr. Collingwood's</p> <p>21 data inputs before writing your report?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And your report does not disclose any</p> <p>24 opinions or criticisms about his data inputs; is</p> <p>25 that correct?</p> <p style="text-align: right;">28</p>



<p>1 A. Yes, that's correct.</p> <p>2 Q. All right. And I'm going to use the term EI to</p> <p>3 refer to ecological inference. You'll</p> <p>4 understand what I mean?</p> <p>5 A. Yes.</p> <p>6 Q. Your report contains no criticisms of the</p> <p>7 methodology that Dr. Collingwood would use for</p> <p>8 conducting his EI regression analysis to</p> <p>9 estimate racially polarized voting, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you don't dispute that the results in his</p> <p>12 report reflecting the percentage of white and</p> <p>13 black voters who voted for a particular</p> <p>14 candidate in a particular region for a</p> <p>15 particular election are the product of accurate</p> <p>16 and reliable implementation of the EI</p> <p>17 methodology, correct?</p> <p>18 A. I certainly can't validate that in a detailed</p> <p>19 sense, but I don't contest that.</p> <p>20 Q. You don't contest that his EI regression results</p> <p>21 are the product of an accurate and reliable</p> <p>22 implementation of the EI methodology, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And you haven't disclosed any opinion disputing</p> <p>25 any of his EI point estimates, correct?</p> <p style="text-align: right;">29</p>	<p>1 You conducted your own EI regression</p> <p>2 analysis in this case, correct?</p> <p>3 A. Correct. As I said, I have an independent EI</p> <p>4 analysis. The actual programming conducting</p> <p>5 that, the run is actually done by Dr. Randy</p> <p>6 Stevenson who I work with on these cases. So</p> <p>7 the actual production run he does on his</p> <p>8 computer.</p> <p>9 But working with him, yes, we did</p> <p>10 independent analysis that allowed us to confirm</p> <p>11 that our results within the variation you'd</p> <p>12 expect in a technique like EI essentially match</p> <p>13 very closely with Dr. Collingwood's analysis.</p> <p>14 And to keep this from becoming sort of my data,</p> <p>15 your data -- actually, Dr. Collingwood -- his</p> <p>16 testimony in Soto Palmer when he was asked about</p> <p>17 the analysis seems really similar, and he said</p> <p>18 the data is the data is the data, which I</p> <p>19 think -- I was sort of the analysis is the</p> <p>20 analysis is the analysis.</p> <p>21 If done correctly, there shouldn't be</p> <p>22 substantial differences, and to keep from having</p> <p>23 that fight or forcing the judge to pick one</p> <p>24 analysis or the other, to the extent that the</p> <p>25 differences are small enough that I don't think</p> <p style="text-align: right;">31</p>
<p>1 A. Correct.</p> <p>2 Q. And in fact, your report accepts and relies upon</p> <p>3 his EI analysis, correct?</p> <p>4 ATTORNEY McKNIGHT: Objection; form.</p> <p>5 THE WITNESS: Correct.</p> <p>6 BY ATTORNEY THEODORE:</p> <p>7 Q. And your report accepts and relies upon all of</p> <p>8 his white voter support and black voter support</p> <p>9 estimates for all of the candidates and</p> <p>10 elections that he analyzes, correct?</p> <p>11 ATTORNEY McKNIGHT: Objection; form.</p> <p>12 THE WITNESS: So certainly for</p> <p>13 everything that I'm discussing in my report, I</p> <p>14 am utilizing his -- deliberately utilizing his</p> <p>15 EI estimates, so I'm not contesting those</p> <p>16 estimates.</p> <p>17 ATTORNEY THEODORE: Thank you.</p> <p>18 ATTORNEY McKNIGHT: Pardon me,</p> <p>19 Elisabeth. I just want to make sure that the</p> <p>20 court reporter can hear when I am objecting.</p> <p>21 Can the court reporter confirm that</p> <p>22 she's hearing my objections.</p> <p>23 THE REPORTER: I am. I can hear you.</p> <p>24 BY ATTORNEY THEODORE:</p> <p>25 Q. And we'll talk about this a little bit later.</p> <p style="text-align: right;">30</p>	<p>1 they make a substantive difference, I always</p> <p>2 prefer to use the plaintiff's analysis, the</p> <p>3 plaintiff's EI estimates rather than my own. I</p> <p>4 wouldn't reach a different conclusion with the</p> <p>5 analysis that Dr. Stevenson and I did, but I</p> <p>6 just think it's helpful to the court not to have</p> <p>7 to fight that battle.</p> <p>8 Q. Okay. So you agree for purposes of the analysis</p> <p>9 in this case, you and the court should use</p> <p>10 Dr. Collingwood's numbers?</p> <p>11 A. I'd be perfectly fine with the court using my</p> <p>12 numbers. I'd be perfectly fine with them using</p> <p>13 Dr. Collingwood's numbers. I'm just saying I</p> <p>14 don't think anything that I conclude or</p> <p>15 Dr. Collingwood concludes or the court needs to</p> <p>16 reach would be different by having a fight about</p> <p>17 those numbers. Dr. Collingwood is a competent</p> <p>18 analyst, and so that's -- in my view at least,</p> <p>19 with regard to the EI analysis, that's not an</p> <p>20 issue in this case.</p> <p>21 Q. All right. What are the dependent and</p> <p>22 independent variables in the EI analysis that</p> <p>23 you and Dr. Stevenson conducted in this case?</p> <p>24 A. So we're dealing with election results at the</p> <p>25 precinct level as essentially the dependent</p> <p style="text-align: right;">32</p>

<p>1 variables, so shares of votes for candidates.</p> <p>2 And on the independent variable side, we're</p> <p>3 dealing with the information from Secretary of</p> <p>4 State about the race or ethnicity of voters. So</p> <p>5 we're comparing in this case black and white</p> <p>6 voters to voter support at the precinct level</p> <p>7 for candidates in the various elections that we</p> <p>8 considered here.</p> <p>9 Q. And that's no different than the dependent and</p> <p>10 independent variables in Dr. Collingwood's EI</p> <p>11 analysis, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And would you agree that the basic point of a</p> <p>14 regression is to attempt to establish causal</p> <p>15 relationships between the independent variable</p> <p>16 and the dependent variable?</p> <p>17 A. I don't know. I guess I would not -- that's a</p> <p>18 very technical issue.</p> <p>19 Regression is an attempt to summarize</p> <p>20 the relationship between the independent and</p> <p>21 dependent variable in a particular fashion. In</p> <p>22 the degree to which there is a linear</p> <p>23 relationship between two continuous variables</p> <p>24 and summarizing the nature of that relationship,</p> <p>25 regression is one technique for doing that.</p> <p style="text-align: right;">33</p>	<p>1 So this is useful information. It</p> <p>2 summarizes a large set of data, but it is -- in</p> <p>3 and of itself it's I think improper to talk</p> <p>4 about it as somehow a -- summarizing a causal</p> <p>5 relationship. Obviously, there may be a causal</p> <p>6 relationship in some sense, although certainly</p> <p>7 not at the aggregate level, but even if at the</p> <p>8 individual level we want to talk about that, we</p> <p>9 would have to do something at the design level</p> <p>10 beyond just a survey of information at the voter</p> <p>11 level.</p> <p>12 Q. When you talked about in your previous answer</p> <p>13 the difference between the aggregate level and</p> <p>14 the individual level, what do you mean?</p> <p>15 A. So we have an individual-level hypothesis here</p> <p>16 about how the race of voters relates to the</p> <p>17 votes cast by voters, and we don't have any</p> <p>18 individual-level data on that question. What we</p> <p>19 have is at the precinct level, we know that a</p> <p>20 proportion of the voters at the precinct that</p> <p>21 are in this case black and white and we know the</p> <p>22 proportion of voters who voted, say, for</p> <p>23 President Biden, right.</p> <p>24 That aggregate-level information can</p> <p>25 tell us about what's the relationship between</p> <p style="text-align: right;">35</p>
<p>1 Statistical techniques in and of</p> <p>2 themselves are like statistics that summarize</p> <p>3 something, whether it's a mean summarizing a</p> <p>4 single variable or summarizing the relationship</p> <p>5 between variables, like a correlation or</p> <p>6 regression, are simply a means of summarizing a</p> <p>7 body of data that's too large for us to sort of</p> <p>8 understand that or correctly characterize it by</p> <p>9 reporting all the data.</p> <p>10 No -- none of those techniques are</p> <p>11 causal analysis. Causal analysis has to do with</p> <p>12 design of the study, not with the techniques.</p> <p>13 So constructed properly, you can use a variety</p> <p>14 of techniques to try to demonstrate causation,</p> <p>15 even things as simple as just a cross tab or a</p> <p>16 set of means. That doesn't mean that the mean</p> <p>17 or the average is itself a causal technique. It</p> <p>18 really has to do with design.</p> <p>19 Here we're -- even if we were dealing</p> <p>20 at the individual level, it would not constitute</p> <p>21 when the social sciences at least -- or the</p> <p>22 sciences for that matter would be considered a</p> <p>23 causal framework. These are not experimental or</p> <p>24 quasiexperimental studies, and not even at the</p> <p>25 right level of analysis.</p> <p style="text-align: right;">34</p>	<p>1 what proportion of a precinct is black and what</p> <p>2 proportion the vote goes for Biden. It can't</p> <p>3 answer the question about what happens at the</p> <p>4 individual level. That's the ecological</p> <p>5 fallacy.</p> <p>6 Ecological inference is not a technique</p> <p>7 that settles or solves or addresses the</p> <p>8 ecological fallacy. It accepts the ecological</p> <p>9 fallacy and then tries to do a better job than,</p> <p>10 say, ordinary regression would do in properly</p> <p>11 understanding what -- how we can officially</p> <p>12 extract information at the aggregate level and</p> <p>13 then how we can properly condition that</p> <p>14 extracted information in the sense of having a</p> <p>15 credible or a confidence interval around it.</p> <p>16 Both of those are failings of</p> <p>17 ordinarily squares regression that are addressed</p> <p>18 to some degree or improved upon to some degree</p> <p>19 by broadly what we call EI, the method of bounds</p> <p>20 ecological inference developed by Dr. King.</p> <p>21 But I think it's certainly not the case</p> <p>22 that using the best possible techniques for</p> <p>23 ecological inference in any way addresses the</p> <p>24 fundamental issue here which is that the</p> <p>25 ecological fallacy is still in operation. We're</p> <p style="text-align: right;">36</p>

<p>1 trying to infer something about individual 2 behavior from aggregate behavior, and that 3 disjunction between the level of analysis of 4 concern and the level of analysis of the data is 5 something that cannot be bridged simply by a 6 fancy methodological technique.</p> <p>7 Q. All right. So put a little bit more succinctly, 8 the EI method does not allow you to make causal 9 statements. Is that fair?</p> <p>10 ATTORNEY McKNIGHT: Objection; form.</p> <p>11 THE WITNESS: It does not allow you to 12 make causal statements at the individual level, 13 and I'm not sure -- I haven't really thought 14 about what a causal statement at the aggregate 15 level in this case would look like.</p> <p>16 Given that we assume that behavior 17 takes place at the individual level, although 18 that itself, right, that's a reductionistic 19 assumption that economics and psychology would 20 take. It's a reduction that sociology might not 21 take.</p> <p>22 There's a lot of complexity in what 23 you're asking, but I guess a simple answer is on 24 lots of different grounds, none of this is a 25 causal analysis.</p> <p style="text-align: right;">37</p>	<p>1 straight what the court means by that so when 2 the court says we find that voting in state of 3 North Carolina is racially polarized, that I 4 think usually means racially polarized as 5 opposed to just racially polarized.</p> <p>6 So in the broadest sense, racially 7 polarized voting could simply mean that two 8 groups of voters, in this case blacks and 9 whites, vote as polar opposite, that is, that 10 they are polarized in their voting behavior.</p> <p>11 So I would say that's probably the 12 broadest definition. I don't think it's 13 the -- it's maybe the starting point for a legal 14 analysis, but I don't think it's what the court 15 means when it finds that voting is racially 16 polarized.</p> <p>17 So it obviously involves the behavior 18 of the two sets of voters and I believe involves 19 more than just having a different preferred 20 candidate. So blacks having a different 21 preferred candidate is not in any sense racially 22 polarized voting in and of itself.</p> <p>23 Q. So what is your understanding, then, of the term 24 racially polarized voting?</p> <p>25 A. So my understanding would be first that -- just</p> <p style="text-align: right;">39</p>
<p>1 BY ATTORNEY THEODORE:</p> <p>2 Q. Okay. What do you understand the term black 3 preferred candidate to mean?</p> <p>4 A. The candidate preferred by black voters.</p> <p>5 Q. All right. And what about white preferred 6 candidate?</p> <p>7 A. Candidate preferred by white voters.</p> <p>8 Q. And do you mean preferred by a majority of white 9 voters or black voters?</p> <p>10 A. No.</p> <p>11 Q. What do you mean?</p> <p>12 A. I just mean that in the array of candidates, if 13 there is one, the candidate that has the largest 14 number of votes from that group.</p> <p>15 Q. And you agree that in some election contests 16 with both black and white candidates, a white 17 candidate could be the preferred candidate for 18 black voters, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And what is your understanding of the term 21 racially polarized voting or RPV?</p> <p>22 A. So it has sort of just a commonsense kind of 23 meaning, what it suggests, and it has a very 24 different legal meaning. And so in this 25 context, I think it's important to kind of keep</p> <p style="text-align: right;">38</p>	<p>1 in its most generic sense, voting is polarized. 2 When we use the term polar, it's not accidental. 3 Polarized voting comes when voters are 4 polarized.</p> <p>5 So we know, for example, that 6 traditionally American voters weren't considered 7 to be polarized on the basis of party, and we've 8 entered an era now where everyone, political 9 scientists, politicians agree that we're 10 currently in the year of highly polarized, 11 partisan politics. And we see that when we look 12 at the voting behavior of self-described 13 Democrats and Republicans.</p> <p>14 So much to the amazement of my 15 Democratic colleagues, self-described 16 Republicans continue to support Donald Trump at 17 over 90 percent, and much to the surprise of my 18 Republican colleagues, self-described Democrats 19 continue to support Joseph Biden at something 20 close to at least 90 percent.</p> <p>21 So when 90 percent plus of one group 22 goes one way and 90 percent goes the other way, 23 we have the two groups behaving in polar 24 opposite ways. Now, this is exactly what we 25 mean by a polarized legislature, when pretty</p> <p style="text-align: right;">40</p>

<p>1 much all the Republicans vote one way and all 2 the Democrats vote the other in the Senate, for 3 example, we'd say voting on that bill was 4 polarized.</p> <p>5 And again, if Democrats were voting 6 52 percent for Kamala Harris and 48 percent for 7 Trump and the reverse for Republicans, no one 8 would say voting in the United States was 9 polarized on the basis of party. That would be 10 remarkably unpolarized voting. So I think it 11 requires -- obviously, the two groups that 12 you're going to say are polarized would have to 13 be on opposite sides of an issue, but they have 14 to be more on just opposite sides. They 15 actually have to be polarized.</p> <p>16 Q. Okay. So and I just want you to focus on racial 17 polarization.</p> <p>18 The term racially polarized voting, I 19 think you said in your previous answer that just 20 because black and white voters prefer different 21 candidates, in your view, that doesn't mean 22 there is racially polarized voting. Is that 23 what you said?</p> <p>24 A. Yeah. I want to be clear, we're talking about 25 in my view because I recognize that maybe the</p> <p style="text-align: right;">41</p>	<p>1 What is your understanding of the term 2 white bloc voting?</p> <p>3 A. White bloc voting is a legal term of art. It 4 doesn't have a social science meaning that I'm 5 aware of, so it's something that is an issue 6 unique to Voting Rights Act litigation. And it 7 refers at least -- I'm not a lawyer, but as I 8 understand it, it refers to a situation in which 9 in Gingles 2 there's -- the court can conclude 10 that minority voters are voting cohesively and 11 that candidate that's being cohesively supported 12 by minority voters, their election is being 13 blocked by cohesive support for the opposing 14 candidate by white voters.</p> <p>15 And again, that's -- and I'm not 16 talking about legally significant white bloc 17 voting. I'm just talking about white bloc 18 voting.</p> <p>19 Q. Understood.</p> <p>20 And putting aside legally significant 21 white bloc voting, you agree that there is white 22 bloc voting in Senate Districts 1 and 2 in this 23 case, correct?</p> <p>24 ATTORNEY McKNIGHT: Objection; form. 25 THE WITNESS: I don't recall -- I'm not</p> <p style="text-align: right;">43</p>
<p>1 majority -- at least a decade ago I would say 2 the majority of plaintiffs' experts believe that 3 if 50 percent plus 1 of blacks voted one way and 4 50 percent plus 1 of whites voted the other, 5 that would be racially polarized voting.</p> <p>6 I think we've moved away from that in 7 the current decade, at least as I read the 8 subset of expert reports that I get to read.</p> <p>9 What I see increasingly are plaintiffs' experts 10 are saying maybe you need 60 percent voting one 11 way and 60 percent the other to meet some sort 12 of threshold where you have enough cohesion in 13 each of the two groups that makes sense to talk 14 about it as being polarized.</p> <p>15 I'm not at all sure that's an arbitrary 16 cutpoint, and I appreciate at least it's better 17 than 50 percent plus 1, but I don't think we've 18 come near exhausting the territory across which 19 we might talk about degree of relative cohesion.</p> <p>20 So in my view, 50 percent plus 1 versus 21 50 percent plus 1 is not racially polarized 22 voting, but I'm not contesting that there are 23 other plaintiffs' experts who would define that 24 as racially polarized voting.</p> <p>25 Q. Okay. And we can return to this a bit later.</p> <p style="text-align: right;">42</p>	<p>1 sure I looked at that particular issue, so I 2 don't know.</p> <p>3 I think -- I think that's probably the 4 case, but I'm not -- I'm not sure. I'd have to 5 go back and look and see what the actual -- that 6 would be -- that involves actually looking at 7 the election results to see what happens with 8 those preferences. If it's the case that the 9 preference of black voters is being blocked in 10 those district by white voters, the preference 11 of black voters not winning in those districts, 12 then that would meet that definition of white 13 bloc voting although not necessarily reaching 14 legally significant white bloc voting.</p> <p>15 BY ATTORNEY THEODORE:</p> <p>16 Q. You believe that the term white bloc voting 17 itself incorporates a requirement of blocking 18 black preferred candidates?</p> <p>19 A. This is where I think it's not obvious to me 20 exactly -- I think you can use the term in a 21 variety of different ways, but I think at the 22 loosest or the broadest sense, sometimes people 23 simply refer to cohesive white voting as white 24 bloc voting, although they don't refer to 25 minority cohesion as minority bloc voting, but</p> <p style="text-align: right;">44</p>

<p>1 if that's the case that this just refers to</p> <p>2 cohesive white voting, then it should refer to</p> <p>3 minority voting -- it should be the same thing</p> <p>4 for minority voting, so we have minority bloc</p> <p>5 voting and white bloc voting.</p> <p>6 At least as I understand it's a legal</p> <p>7 term, it is all connected more broadly to the</p> <p>8 application of the Gingles factors. In that</p> <p>9 sense again I think is a legal term of art.</p> <p>10 Q. All right. You were asked to offer an opinion</p> <p>11 in this case about Gingles Preconditions 2 and</p> <p>12 3, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Can you describe briefly your understanding of</p> <p>15 Gingles Precondition 2.</p> <p>16 A. Gingles Precondition 2 is a threshold test that</p> <p>17 asks the question about whether minority voters</p> <p>18 are voting cohesively in the elections that we</p> <p>19 analyze.</p> <p>20 Q. And you agree that Gingles 2 doesn't require</p> <p>21 black voters to cohesively support black</p> <p>22 candidates, correct?</p> <p>23 A. Correct.</p> <p>24 Q. They can be cohesively supporting white</p> <p>25 candidates and still satisfy Gingles 2, correct?</p> <p style="text-align: right;">45</p>	<p>1 relevant regions of North Carolina or the</p> <p>2 regions of interest. And can we agree that that</p> <p>3 would mean the demonstration area, Senate</p> <p>4 District 1 and Senate District 2?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you agree that black voters are</p> <p>7 politically cohesive in the demonstration area,</p> <p>8 Senate District 1 and Senate District 2?</p> <p>9 A. Yes.</p> <p>10 Q. All right. So you agree that the Gingles 2</p> <p>11 precondition is satisfied in this case?</p> <p>12 A. Yes.</p> <p>13 Q. Can you describe briefly your understanding of</p> <p>14 Gingles Precondition 3.</p> <p>15 A. So Gingles Precondition 3, again, assumes that</p> <p>16 we've made it across the threshold of Gingles 2</p> <p>17 so we know that we have cohesive voting on the</p> <p>18 part of minority voters, and the question being</p> <p>19 asked by Gingles 2 is whether white voters are</p> <p>20 voting cohesively -- sufficiently cohesively to</p> <p>21 block the candidate being cohesively supported</p> <p>22 by black voters and that that behavior is</p> <p>23 connected to issues related to -- or it is</p> <p>24 racially discriminatory.</p> <p>25 There's a lot of ways to think about</p> <p style="text-align: right;">47</p>
<p>1 A. As a technical matter, I think that's true,</p> <p>2 although I find it -- I think it would be</p> <p>3 certainly -- I've never seen a pattern which you</p> <p>4 have black and white candidates running in</p> <p>5 elections and black voters are voting -- always</p> <p>6 voting cohesively for the white candidate in</p> <p>7 opposition to the black candidate, but certainly</p> <p>8 the basic definition doesn't necessarily</p> <p>9 prohibit that possibility, but it certainly I</p> <p>10 think would be something of interest if that is</p> <p>11 what were taking place. I've never seen that</p> <p>12 fact pattern.</p> <p>13 Q. All right. So when I refer to the demonstration</p> <p>14 area throughout this deposition, will you</p> <p>15 understand that I'm referring to the 12 counties</p> <p>16 that form part of one or more of plaintiffs'</p> <p>17 demonstration districts?</p> <p>18 A. Yes, my understanding and I'm accepting that as</p> <p>19 defined in Dr. Collingwood's report.</p> <p>20 Q. Okay.</p> <p>21 A. It's different than Dr. Barreto's area of</p> <p>22 interest, but I'm accepting Dr. Collingwood's</p> <p>23 set of counties as the counties that contain the</p> <p>24 two senate districts of interest.</p> <p>25 Q. All right. And I may sometimes refer to the</p> <p style="text-align: right;">46</p>	<p>1 what that means, but I think you earlier talked</p> <p>2 about or you asked me if black voters were</p> <p>3 politically cohesive. They are. If white</p> <p>4 voters are politically cohesive, I don't think</p> <p>5 that's sufficient to meet the definition of</p> <p>6 legally significant white bloc voting or white</p> <p>7 voters simply being politically cohesive in my</p> <p>8 view doesn't mean that. I understand there are</p> <p>9 different views about that, and I find that at</p> <p>10 least some of the arguments against that</p> <p>11 position are at least partially persuasive, but</p> <p>12 I think my view is that legally significant</p> <p>13 white bloc voting involves discriminatory voting</p> <p>14 on the part of white voters while both they're</p> <p>15 voting cohesively, especially as a bloc to</p> <p>16 defeat the candidate that minority voters are</p> <p>17 supporting cohesively and that some part of that</p> <p>18 behavior can be connected to discrimination on</p> <p>19 the part of voters.</p> <p>20 Q. Okay. Are you planning to express any opinions</p> <p>21 about other aspects of the VRA besides Gingles</p> <p>22 Preconditions 2 and 3?</p> <p>23 A. I assume that this also entangles us in the</p> <p>24 other sort of priority Zimmer factors or Senate</p> <p>25 factors. So certainly Senate Factor 2 seems to</p> <p style="text-align: right;">48</p>



<p>1 be weirdly duplicative of Gingles 2 and 3 which</p> <p>2 is the question of whether there's racially</p> <p>3 polarized voting. That I think is what</p> <p>4 generates the question of whether this is a</p> <p>5 Gingles 3 issue or a totality of circumstances,</p> <p>6 this Zimmer or Senate Factor 2 issue.</p> <p>7 I guess tangentially, the other -- the</p> <p>8 other factor that's often cited as the keystone</p> <p>9 factor is the issue about the election of</p> <p>10 members of the racial minority to take office.</p> <p>11 Q. Does your report contain any analysis of a</p> <p>12 question about the election of members of the</p> <p>13 racial minority to office?</p> <p>14 A. I don't believe -- not directly, no, it does</p> <p>15 not.</p> <p>16 Q. Do you know the approximate BVAP percentage for</p> <p>17 Senate Districts 1 and 2?</p> <p>18 A. Off the top of my head, no.</p> <p>19 Q. Do you have a ballpark?</p> <p>20 A. I certainly have seen it at various times, but</p> <p>21 given the number of other districts I've looked</p> <p>22 at in the last 48 hours, I'm not going to -- I'm</p> <p>23 not going to hazard a guess.</p> <p>24 Q. Fair enough. All right.</p> <p>25 So Dr. Collingwood's EI analysis</p> <p style="text-align: right;">49</p>	<p>1 polarized. Certainly if white voters were</p> <p>2 voting with the same levels of cohesion as black</p> <p>3 voters, then I think it would be fair to say it</p> <p>4 was highly polarized.</p> <p>5 The crossover voting varies in some of</p> <p>6 these elections and obviously varies a bit</p> <p>7 across geography, so I think the two groups are</p> <p>8 voting very differently. I think you wouldn't</p> <p>9 be improper to characterize that as some degree</p> <p>10 polarized, but whether it's highly polarized or</p> <p>11 not, I'm not sure.</p> <p>12 BY ATTORNEY THEODORE:</p> <p>13 Q. All right. I'm going to transmit in the chat</p> <p>14 what I'm going to mark as Exhibit 2, which is</p> <p>15 Dr. Collingwood's expert report.</p> <p>16 ATTORNEY McKNIGHT: Elisabeth, if I</p> <p>17 might, we've been going a little over an hour.</p> <p>18 If we take a break now, this will give me an</p> <p>19 opportunity to print a paper copy.</p> <p>20 ATTORNEY THEODORE: Sure. You want to</p> <p>21 take a ten-minute break, five-minute break,</p> <p>22 however long you want.</p> <p>23 ATTORNEY McKNIGHT: Sure. We'll try to</p> <p>24 be back here -- we'll endeavor for five, you</p> <p>25 know, maybe a few minutes after.</p> <p style="text-align: right;">51</p>
<p>1 focused on statewide elections from 2016, 2018,</p> <p>2 2020, and 2022, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And your report does not criticize his choice of</p> <p>5 elections, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And as we've discussed, he analyzed racially</p> <p>8 polarized voting in the demonstration area as</p> <p>9 well as Senate Districts 1 and 2 and also</p> <p>10 statewide, correct?</p> <p>11 A. That's my recollection, yes.</p> <p>12 Q. And your report does not criticize his choice of</p> <p>13 regions to focus on, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Do you agree that elections in the demonstration</p> <p>16 area and in Districts 1 and 2 are highly</p> <p>17 polarized based on the race of the voter?</p> <p>18 ATTORNEY McKNIGHT: Objection; form.</p> <p>19 THE WITNESS: Well, yeah, I'm not sure.</p> <p>20 Let's see. So black voters are voting very</p> <p>21 cohesively. White voters less cohesively. I</p> <p>22 mean, it's -- obviously, there's strong</p> <p>23 differences in how those two groups are voting.</p> <p>24 I guess I'm a little -- the adjectives</p> <p>25 always concern me a little bit. Highly</p> <p style="text-align: right;">50</p>	<p>1 (Brief Recess: 11:07 to 11:17 a.m.)</p> <p>2 (WHEREUPON, Plaintiff's Exhibit 2 was</p> <p>3 marked for identification.)</p> <p>4 BY ATTORNEY THEODORE:</p> <p>5 Q. Okay. So let's turn to page 9 of</p> <p>6 Dr. Collingwood's report, which I've marked as</p> <p>7 Exhibit 2.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. You see Figure 2 there which is his RPV</p> <p>10 results for Senate District 1. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And Dr. Collingwood finds that black</p> <p>13 voters in Senate District 1 supported the black</p> <p>14 preferred candidate at average rates of</p> <p>15 94 percent in 2022 and 97 or 98 percent in 2016,</p> <p>16 2018, and 2020, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Let's turn to Figure 3 on page 10.</p> <p>19 This is the same chart for District 2,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And Dr. Collingwood finds that black voters</p> <p>23 supported the black preferred candidate at</p> <p>24 average rates of 98 percent or 99 percent in all</p> <p>25 four election years in District 2, correct?</p> <p style="text-align: right;">52</p>

<p>1 A. Correct.</p> <p>2 Q. All right. And let's turn to Figure 4 on</p> <p>3 page 11. I'm sorry. It's on page 12.</p> <p>4 A. Yes.</p> <p>5 Q. All right. Same plot for the demonstration</p> <p>6 area, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. And Dr. Collingwood finds that black voters</p> <p>9 supported the black preferred candidate at</p> <p>10 average rates of 98 percent or 99 percent in all</p> <p>11 four election years in the demonstration area,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. You agree that these results show that black</p> <p>15 voters are extremely politically cohesive?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And you've worked on a lot of VRA cases.</p> <p>18 Do you routinely see black voters in</p> <p>19 large areas supporting black preferred</p> <p>20 candidates at rates of 98 percent and</p> <p>21 99 percent?</p> <p>22 A. I would say, you know, we're obviously subject</p> <p>23 to the fact that we're doing an ecological</p> <p>24 inference, and I would say almost always in</p> <p>25 partisan elections black voters will be -- have</p> <p style="text-align: right;">53</p>	<p>1 election results?</p> <p>2 A. Yes. Because you have registration by race in</p> <p>3 North Carolina, they can include that and do</p> <p>4 include that in the analysis.</p> <p>5 So other states where you don't have</p> <p>6 registration by race, they can't include it and</p> <p>7 don't include it. So I guess it's a technical</p> <p>8 issue, but the fact that you have a race</p> <p>9 question, ethnicity question on the voter</p> <p>10 registration is what allows this to be reported.</p> <p>11 And, yes, it is -- it makes -- it improves the</p> <p>12 quality of the analysis because you're not</p> <p>13 simultaneously estimating turnout and vote</p> <p>14 direction, you're estimating only vote</p> <p>15 direction.</p> <p>16 Q. Okay. The RPV results that you independently</p> <p>17 calculated in your appendix also show that black</p> <p>18 voters are highly politically cohesive, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that's across all elections and all years</p> <p>21 that you considered?</p> <p>22 A. Generally speaking, yes. For the partisan</p> <p>23 elections, yes, that's true.</p> <p>24 Q. Okay. You've stated previously that you believe</p> <p>25 that 75 percent is a good standard for</p> <p style="text-align: right;">55</p>
<p>1 cohesion levels -- well, typically be 95 percent</p> <p>2 and up. And I don't think given the methodology</p> <p>3 that makes a lot of sense to distinguish</p> <p>4 95 percent from, say, 98 percent.</p> <p>5 And I don't think we need to</p> <p>6 substantively -- or I guess when voting cohesion</p> <p>7 is at or above 95 percent, that's very cohesive</p> <p>8 voting behavior. So I'm not sure that you would</p> <p>9 necessarily see maybe 98 percent as an estimate,</p> <p>10 but that can reflect a lot of things that make</p> <p>11 it easier or harder to do the analysis.</p> <p>12 So I don't make much of the fact that</p> <p>13 it's 98 percent versus 95 percent, but I would</p> <p>14 say in partisan elections, almost always black</p> <p>15 voting is in the range of 95 percent or more in</p> <p>16 terms of cohesion.</p> <p>17 Q. Okay.</p> <p>18 A. So these are well within the area that you would</p> <p>19 expect to see for black voting in a partisan</p> <p>20 election.</p> <p>21 Q. Okay. One of the reasons -- well, do you agree</p> <p>22 with this statement that one of the reasons it's</p> <p>23 easier to do EI analysis in North Carolina is</p> <p>24 that the State Board of Elections includes</p> <p>25 information about the race of the voters in the</p> <p style="text-align: right;">54</p>	<p>1 determining whether white voters are voting</p> <p>2 cohesively; is that right?</p> <p>3 A. It is -- I don't -- I don't even know what the</p> <p>4 standard should be, quite frankly. I think the</p> <p>5 court should enunciate a standard. I'm a strong</p> <p>6 backer of -- disputes about whether Gingles 1 is</p> <p>7 met or not met have been largely put to bed by</p> <p>8 the court saying it means 50 percent plus 1</p> <p>9 citizen voting age population, bright-line test.</p> <p>10 Even with that, it continues to be -- as</p> <p>11 recently as my Spring Branch case continues to</p> <p>12 be disputed, but at least there's a bright-line</p> <p>13 test.</p> <p>14 And what I see in my experience over</p> <p>15 the last 40 years is basically all over the map</p> <p>16 from essentially no cohesion to perfect cohesion</p> <p>17 being described as satisfying Gingles 2. So I</p> <p>18 would like to have some standard.</p> <p>19 And I will say I'm offering 75 percent</p> <p>20 only because it is the only non-arbitrary</p> <p>21 cutoff. So the mathematical sense, 75 percent</p> <p>22 is a non-arbitrary halfway point between</p> <p>23 absolute cohesion and perfect cohesion.</p> <p>24 Obviously, it wouldn't matter here because</p> <p>25 you're so close to perfect cohesion that I think</p> <p style="text-align: right;">56</p>



<p>1 anybody would describe that as highly cohesive 2 voting and it would satisfy I think any test 3 that you might propose, but, you know, whether 4 the court wants to go with 80 percent or 5 90 percent or 60 percent, it just would be 6 helpful if the court would choose a point. 7 And all I'm pointing out is that 8 60 percent I think is very low threshold for 9 defining cohesion. It also is arbitrary. 10 80 percent might be a more reasonable threshold, 11 but it is still arbitrary. 75 percent is not 12 arbitrary. 13 Q. Okay. And you've said before that 75 percent is 14 the standard that you have applied for judging 15 whether white voters are voting cohesively, 16 correct? 17 A. I think it's a way of, again, absolute actual 18 standard. What we're really doing here is 19 simply reporting a continuous variable and 20 leaving it up to the court to figure out what to 21 do with it. So I guess I'm reluctant to put 22 categories or descriptors on cohesion. 23 There is no, as I understand it, a 24 court standard for what it is that makes 25 something legally cohesive or legally not</p> <p style="text-align: right;">57</p>	<p>1 Q. All right. Can you flip to page 94, please. 2 A. I do remember this deposition now. The lawyer 3 sent me out to the best steak dinner in my 4 lifetime after this deposition. That's the part 5 I remember. Man, that was a good dinner. 6 Q. All right. Well, I'm going to direct you to a 7 less memorable part. 8 And you see there on line 18 you say: 9 "75 percent is just the standard 10 for judging whether either black or 11 white voters are voting cohesively." 12 Did I read that correctly? 13 A. Could I -- I just want to understand the -- sort 14 of the context of this questioning starts 15 earlier. 16 Yeah. So again, at least as I 17 understand it, what I'm saying here is, you 18 know, 75 percent is a non-arbitrary threshold, 19 and if you apply that, then you can say these 20 things are above 75 percent and these are below 21 75 percent. 22 I don't take that to mean -- to answer 23 the question of whether you've met Gingles 2 or 24 not, but I think it would be at least a 25 non-arbitrary way of doing that.</p> <p style="text-align: right;">59</p>
<p>1 cohesive for Gingles 2. So again, I think 2 75 percent -- at least with 75 percent you can 3 say that puts you in a range where if you move 4 above that, you're moving into a range where 5 voters are more cohesive than not, and below 6 that you're moving into a range where they're 7 less cohesive. 8 Q. Okay. Bear with me for one moment. All right. 9 I am going to transmit in the chat and 10 mark as Exhibit 3 a document which is your 11 deposition in the case of Mississippi State 12 Conference of the NAACP versus State Board of 13 Election Commissioners. 14 (WHEREUPON, Plaintiff's Exhibit 3 was 15 marked for identification.) 16 BY ATTORNEY THEODORE: 17 Q. Do you see that? 18 A. We're bringing it up. All right. We've got it. 19 Q. Thank you. 20 You recognize that as your deposition 21 in that case? 22 A. It seems so long ago, but, yes, it looks like my 23 deposition. 24 Q. It was taken in December 2023; is that right? 25 A. Yeah, a lifetime ago. You're right.</p> <p style="text-align: right;">58</p>	<p>1 Q. So you say there "75 percent is just the 2 standard for judging whether either black or 3 white voters are voting cohesively," and I'm 4 just asking did I read that correctly? 5 A. Yes. And so I'm just commenting on in terms of 6 the material that they're discussing -- that we 7 were discussing at that point which was just 8 sort of using -- understanding that that's a 9 potential standard and then just applying that 10 to do a sort of a checkbox for -- for whether 11 black or white voters are voting cohesively. So 12 that -- of course, the cohesion is the Gingles 2 13 test, not the Gingles 3 test. White voter 14 cohesion would be important if the case was 15 being brought by white voters. 16 So I testified in a case in Louisiana 17 which white voters were suing under the 18 Voting Rights Act to get a single-member 19 district, and there the issue would have been 20 white voter cohesion. I would assume you would 21 want to apply the same standard, but Gingles 3 22 is not a test to whether white voters are 23 cohesive. 24 Q. So just to be clear, 75 percent is a standard 25 that you applied in the Mississippi case to</p> <p style="text-align: right;">60</p>

<p>1 assess whether black or white voters are voting 2 cohesively, correct? 3 ATTORNEY McKNIGHT: Objection; form. 4 THE WITNESS: I would say to report in 5 a summary fashion whether they were cohesive or 6 not. 7 BY ATTORNEY THEODORE: 8 Q. All right. You said that whether white voters 9 are voting cohesively is not relevant to 10 Gingles 3. 11 Do you regard -- well, let me strike 12 that. 13 Putting aside the term legally 14 significant, do you regard the term white bloc 15 voting as any different than white voters voting 16 cohesively? 17 A. Yes. 18 Q. Can you explain how you regard those two things 19 as different? 20 A. Well, again, maybe they're not meant to refer to 21 anything different, but at least my view is that 22 that term is applied -- right, so we don't say 23 that Gingles 2 -- the question in Gingles 2 is 24 black bloc voting when we talk about there the 25 level of cohesion. And having established that</p> <p style="text-align: right;">61</p>	<p>1 THE WITNESS: So, yeah, it will depend 2 on a whole host of things, and at least I try to 3 think of sort of what the motivation of the 4 Gingles factors are because I think that's 5 really what these cases are about. And what 6 motivates Gingles 3 is to understand 7 whether -- so when you think about what 1 and 2 8 established, 1 established that you have a more 9 than 50 percent of the eligible population will 10 be minority and Gingles 2 establishes that 11 they're voting cohesively, and so what's 12 stopping them from prevailing, and the answer is 13 potentially it is white bloc voting. And if 14 that's the case, then what you've established is 15 if instead you tally the votes up in a district 16 that was 50 percent plus 1 minority, minority 17 voters would prevail. So it's the interaction 18 of all three of those things that leads to the 19 utility of the Gingles test. 20 And so what you should -- what you're 21 effectively evaluating Gingles 3 is whether the 22 conditions exist that would allow black voters 23 to prevail in a majority district but would not 24 allow them to prevail absent that majority. 25 BY ATTORNEY THEODORE:</p> <p style="text-align: right;">63</p>
<p>1 black voters are cohesive, we then ask the 2 question about whether white voters are voting 3 as a bloc to defeat the choice -- the cohesively 4 preferred choice of minority voters. 5 So certainly, obviously, part of 6 that -- part of that question would be the 7 degree of cohesion that you see among white 8 voters, but there the -- at least as I 9 understand it, we're talking about that level of 10 voting defined specifically in context with the 11 level of cohesion that we have already met in 12 Gingles 2 for minority voters. 13 So I say that white bloc voting is a 14 contingent question that's related to Gingles 2, 15 and Gingles 2 is obviously not a contingent 16 question because it's not contingent on 17 Gingles 1 and it can't be contingent on 18 Gingles 3. 19 Q. And so whether white bloc voting for Gingles 3 20 is sufficient to usually defeat the preferred 21 candidate of minority voters would depend on 22 things like the minority population in the 23 district and the degree of minority cohesive 24 voting; is that correct? 25 ATTORNEY McKNIGHT: Objection; form.</p> <p style="text-align: right;">62</p>	<p>1 Q. All right. Let's flip to Figure 16 on page 29 2 of Dr. Collingwood's report. I'm sorry. Let's 3 flip to Figure 15 on page 28. 4 A. Yes. 5 Q. And this is Dr. Collingwood's RPV results for 6 elections in 2022 in Districts 1 and 2, correct? 7 A. Yes. 8 Q. And using a 75 percent standard, we see cohesive 9 white voting in all seven contests in 2022 in 10 Districts 1 and 2, correct? 11 A. That is correct. 12 Q. Okay. Let's flip to Figure 16 on page 29. 13 And this is the same as Figure 15 but 14 in the demonstration area, correct? 15 A. Correct. 16 Q. All right. And using this 75 percent standard, 17 we see cohesive white voting in all seven 18 contests in 2022 in the demonstration area, 19 correct? 20 A. Yes. 21 Q. All right. Let's flip to Figure 18 on page 31. 22 This is the same chart for Districts 1 23 and 2 using the 2020 races? 24 A. Yes. 25 Q. All right. And using the 75 percent standard,</p> <p style="text-align: right;">64</p>

<p>1 we see cohesive white voting in all 20 contests</p> <p>2 in 2020 in Districts 1 and 2?</p> <p>3 A. It's a little hard to read. I really don't like</p> <p>4 these -- I'll just say I'm no fan of bar charts</p> <p>5 when they're not necessary. I would much rather</p> <p>6 see this in a table, but I'm seeing 25-2; 27-2;</p> <p>7 28-2; 26-7; 26-1; 29-1; 25-6; 28-4, unless I'm</p> <p>8 reading the wrong numbers here.</p> <p>9 Q. I'm sorry. I'm not sure what you're referring</p> <p>10 to. We're on page 31, Figure 18.</p> <p>11 A. I'm sorry. I thought we were on page 30.</p> <p>12 Q. No. I think page 30 is statewide.</p> <p>13 Page 31, Figure 18.</p> <p>14 Using the 75 percent standard, we see</p> <p>15 cohesive white voting in all 20 contests in 2020</p> <p>16 in Districts 1 and 2, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Let's flip to Figure 19 on page 32.</p> <p>19 Using the 75 percent standard, we see</p> <p>20 cohesive white voting in all 20 contests in 2020</p> <p>21 in the demonstration area, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Let's flip to Figure 22 on page 35.</p> <p>24 A. Okay.</p> <p>25 Q. All right. And using this 75 percent standard,</p> <p style="text-align: right;">65</p>	<p>1 again, you know, if you want to split hairs, you</p> <p>2 round this and it goes to 75 and then the</p> <p>3 standard of cohesion is above 75. That's not</p> <p>4 above 75, it's at 75, just like Gingles 1 is not</p> <p>5 at 50 percent, it's above 50 percent. So you</p> <p>6 can split hairs about it, but the point is, we</p> <p>7 don't actually know that number within a degree</p> <p>8 of accuracy to talk about it that way.</p> <p>9 So, you know, these are -- all these</p> <p>10 are very close to -- or indistinguishable from</p> <p>11 values that would be slightly above 75 percent</p> <p>12 or slightly below 75 percent. So I would say</p> <p>13 that's -- they show what they show. The</p> <p>14 cohesion is hovering somewhere around</p> <p>15 75 percent.</p> <p>16 Q. All right. Let's turn to Figure 24 on page 36.</p> <p>17 I'm sorry. Let's turn to -- we're going to</p> <p>18 Figure 24 on page 37.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And this is the RPV results in 2018 in</p> <p>21 the demonstration area; is that right?</p> <p>22 A. That is correct.</p> <p>23 Q. All right. And using the 75 percent standard,</p> <p>24 we see cohesive white voting in all four</p> <p>25 contests in 2018 in the demonstration area; is</p> <p style="text-align: right;">67</p>
<p>1 we see cohesive white voting in all four</p> <p>2 contests in 2018 in District 2, correct?</p> <p>3 A. Correct.</p> <p>4 Q. All right. And using the 75 percent standard,</p> <p>5 we see cohesive white voting in three of the</p> <p>6 four contests in 2018 in District 1?</p> <p>7 A. I'm seeing two of the four. I see 26-2 and a</p> <p>8 25-2 at the first and last contest.</p> <p>9 Q. Okay. And you see for that last contest it's</p> <p>10 74.8 percent, right? You wouldn't round that to</p> <p>11 75 percent?</p> <p>12 A. Well, yeah, I'm fine with rounding it or not</p> <p>13 rounding it. I don't think -- we don't know</p> <p>14 whether this is above or below 75 percent, but</p> <p>15 it's around 75 percent, so you can count one way</p> <p>16 or the other.</p> <p>17 Q. And you round in your -- the charts you present</p> <p>18 in your report all round -- don't include</p> <p>19 decimals, correct?</p> <p>20 A. We don't -- we don't have decimal accuracy here.</p> <p>21 Q. Right. And so in every single chart of EI</p> <p>22 estimates from your report, you round to the</p> <p>23 nearest integer, correct, without a decimal</p> <p>24 point?</p> <p>25 A. Yes. I'm perfectly find with rounding, but</p> <p style="text-align: right;">66</p>	<p>1 that right?</p> <p>2 A. Correct.</p> <p>3 Q. All right. And for 2016 there's a little bit</p> <p>4 more variation, so let's flip to Figure 2 on</p> <p>5 page 9.</p> <p>6 A. Okay.</p> <p>7 Q. All right. And here we see cohesive white</p> <p>8 voting in Senate District 1 in 2016 on average</p> <p>9 at the 74 percent level; is that right?</p> <p>10 A. I guess -- so you're saying on average?</p> <p>11 Q. Yeah. The average level of white voting against</p> <p>12 the black preferred candidate or white voting</p> <p>13 for the non-black preferred candidate is</p> <p>14 74 percent across the 2016 contests in</p> <p>15 Senate District 1; is that correct?</p> <p>16 ATTORNEY McKNIGHT: Objection; form.</p> <p>17 THE WITNESS: Yeah. So I'm assuming</p> <p>18 that we're looking at that 25.92, so we're going</p> <p>19 to round. So, yes, 74 percent.</p> <p>20 BY ATTORNEY THEODORE:</p> <p>21 Q. All right. Next figure is Figure 3 on page 10.</p> <p>22 And do you agree that this is showing</p> <p>23 cohesive white voting in Senate District 2 in</p> <p>24 the 2016 contests on average at above the</p> <p>25 75 percent level, correct?</p> <p style="text-align: right;">68</p>

<p>1 ATTORNEY McKNIGHT: Objection; form.</p> <p>2 THE WITNESS: Yes. So again,</p> <p>3 obviously, there are elections here where</p> <p>4 there's not the case and there are elections</p> <p>5 where that would be the case, and on average you</p> <p>6 would be at above 75 percent.</p> <p>7 BY ATTORNEY THEODORE:</p> <p>8 Q. And then let's turn to Figure 4 on page 11.</p> <p>9 A. 12.</p> <p>10 Q. 12. I'm sorry. Thank you.</p> <p>11 And here we're -- those figures show</p> <p>12 that there's cohesive white voting in the</p> <p>13 demonstration area in 2016 on average at above</p> <p>14 the 75 percent level, correct?</p> <p>15 A. Yes. And again, there are numerous elections</p> <p>16 that are above that and elections below that,</p> <p>17 and on average it's 21 percent or 79 percent.</p> <p>18 Q. And you're not disputing, considering all of</p> <p>19 these elections and years, that voting in the</p> <p>20 relevant regions is polarized based on the race</p> <p>21 of the voter; is that right?</p> <p>22 ATTORNEY McKNIGHT: Objection; form.</p> <p>23 THE WITNESS: Again, I think the level</p> <p>24 of white cohesion is obviously not as high as</p> <p>25 the level of black cohesion, so certainly black</p> <p style="text-align: right;">69</p>	<p>1 BY ATTORNEY THEODORE:</p> <p>2 Q. In the demonstration in area in 2022, you see</p> <p>3 whites crossing over only at a rate of</p> <p>4 11.6 percent, correct?</p> <p>5 ATTORNEY McKNIGHT: Objection; form.</p> <p>6 THE WITNESS: Yes. So there in 2022,</p> <p>7 it would be something in the range of 10 to</p> <p>8 15 percent; 10 to 20 percent in 2020; 10 to</p> <p>9 20 percent in 2018; and something like 15 to</p> <p>10 30 percent in 2016.</p> <p>11 BY ATTORNEY THEODORE:</p> <p>12 Q. Okay.</p> <p>13 A. We've gone through a lot of tables here, and</p> <p>14 most of those tables we were looking at results</p> <p>15 that were just above or just below 75, so lots</p> <p>16 of things in the 20s, some things above 25, so</p> <p>17 there's a lot of variation here. And we don't</p> <p>18 see -- in any of the contests, we don't see the</p> <p>19 level of cohesion we see among black voters.</p> <p>20 Q. Are you disputing in this case that white voters</p> <p>21 vote sufficiently as a bloc to enable them</p> <p>22 usually to defeat the minority's preferred</p> <p>23 candidate in Senate District 1 and</p> <p>24 Senate District 2?</p> <p>25 ATTORNEY McKNIGHT: Objection; form.</p> <p style="text-align: right;">71</p>
<p>1 cohesion is sufficient to be polarized on the</p> <p>2 basis of the voter group. And I think it's less</p> <p>3 clear in terms of white cohesion whether</p> <p>4 you -- how exactly you characterize that level</p> <p>5 of difference. So you've got, you know, sort of</p> <p>6 across all this something like 20 to 25,</p> <p>7 30 percent of white voters crossing over. I</p> <p>8 guess I'm not -- I'm not sure that that -- what</p> <p>9 the legal importance of that is, but just in</p> <p>10 terms of talking about polar opposites, they're</p> <p>11 not polar opposites because the cohesion level</p> <p>12 of white voters is not in the same region as the</p> <p>13 cohesion level for black voters.</p> <p>14 BY ATTORNEY THEODORE:</p> <p>15 Q. You said across all of this you have something</p> <p>16 like 30 percent of white voters crossing over.</p> <p>17 What's the basis for that?</p> <p>18 A. Yes, in the range of 20 to 30 percent.</p> <p>19 Q. In fact, it's in the range of about 11 to</p> <p>20 30 percent, correct?</p> <p>21 Let's turn to page 12, Figure 4.</p> <p>22 ATTORNEY McKNIGHT: Objection.</p> <p>23 ATTORNEY THEODORE: I'm sorry.</p> <p>24 ATTORNEY McKNIGHT: Pardon me. I</p> <p>25 thought you had finished, Elisabeth. Go ahead.</p> <p style="text-align: right;">70</p>	<p>1 THE WITNESS: No, I'm not.</p> <p>2 BY ATTORNEY THEODORE:</p> <p>3 Q. If one were to accept that the cause of racially</p> <p>4 polarized voting is not relevant to the</p> <p>5 Gingles 3 condition, would you have any basis to</p> <p>6 dispute that the Gingles 3 precondition is</p> <p>7 satisfied in this case?</p> <p>8 ATTORNEY McKNIGHT: Objection; form.</p> <p>9 THE WITNESS: I guess I want to be</p> <p>10 careful because we're stepping into a very</p> <p>11 difficult area when you use the word cause, and</p> <p>12 I don't think that's -- I don't believe that's</p> <p>13 really what we're talking about here.</p> <p>14 So I would say -- my view is that the</p> <p>15 evidence provided here does not -- is</p> <p>16 not -- does not support the view that there is</p> <p>17 legally significant racially polarized voting in</p> <p>18 particular, that you have white bloc voting that</p> <p>19 acts to defeat black preferred candidates in a</p> <p>20 way that interacts to some degree with</p> <p>21 discrimination, however you want to characterize</p> <p>22 that.</p> <p>23 So I don't think -- we don't have the</p> <p>24 tools to demonstrate causation in general. We</p> <p>25 certainly don't in any of this analysis. So I</p> <p style="text-align: right;">72</p>

<p>1 think -- in my report I've indicated how I would</p> <p>2 characterize the results.</p> <p>3 Again, Dr. Collingwood and I are not</p> <p>4 disagreeing about the numbers, but in these</p> <p>5 partisan contests, the analysis simply doesn't</p> <p>6 indicate that these -- that this degree of</p> <p>7 separation or the result in terms of election</p> <p>8 results is connected to race in a way that I</p> <p>9 think it would have to be to meet the standard</p> <p>10 for legally significant white bloc voting.</p> <p>11 BY ATTORNEY THEODORE:</p> <p>12 Q. All right. In order to accept that the</p> <p>13 existence or not of discrimination by white</p> <p>14 voters is not relevant to the Gingles 3</p> <p>15 precondition, would you have any basis to</p> <p>16 dispute that the Gingles 3 precondition is</p> <p>17 satisfied in this case?</p> <p>18 ATTORNEY McKNIGHT: Objection; form.</p> <p>19 THE WITNESS: So to make clear, I don't</p> <p>20 agree with that. I've seen that repeated and it</p> <p>21 continues to be repeated. Dr. Collingwood</p> <p>22 repeats it. I don't think there's any basis for</p> <p>23 that. I've discussed this with other experts.</p> <p>24 So if in fact it makes absolutely no</p> <p>25 difference, it's not a part of legally</p> <p style="text-align: right;">73</p>	<p>1 discrimination by white voters isn't relevant to</p> <p>2 the Gingles 3 precondition, would you have any</p> <p>3 basis to dispute that the Gingles 3 precondition</p> <p>4 is satisfied in this case?</p> <p>5 ATTORNEY McKNIGHT: Objection; form.</p> <p>6 THE WITNESS: I just want to make sure</p> <p>7 that we're not -- we talk about discrimination.</p> <p>8 I'm not sure how to characterize what it is that</p> <p>9 I think is important there, but I think if in</p> <p>10 fact it doesn't matter whether this voting</p> <p>11 is -- whether this polarization is racial or</p> <p>12 partisan, then I would agree that that has been</p> <p>13 met.</p> <p>14 BY ATTORNEY THEODORE:</p> <p>15 Q. Okay. And when you say if one were to accept</p> <p>16 that it doesn't matter whether this voting is</p> <p>17 racial or partisan, you mean if it doesn't</p> <p>18 matter whether this voting is based on the race</p> <p>19 of the candidate or the party affiliation of the</p> <p>20 candidate, correct?</p> <p>21 ATTORNEY McKNIGHT: Objection; form.</p> <p>22 THE WITNESS: It's not about whether</p> <p>23 it's based on the race of the candidate. It</p> <p>24 is -- has to do with whether there's any</p> <p>25 evidence provided here that there's anything</p> <p style="text-align: right;">75</p>
<p>1 significant voting, then all you need to</p> <p>2 establish is -- as Dr. Collingwood says all you</p> <p>3 need to establish is that blacks and whites vote</p> <p>4 differently, then that's been established here.</p> <p>5 BY ATTORNEY THEODORE:</p> <p>6 Q. All right. Let me just repeat -- I appreciate</p> <p>7 that you don't agree with this, but if one were</p> <p>8 to accept that the existence or not of</p> <p>9 discrimination by white voters isn't relevant to</p> <p>10 the Gingles 3 precondition, would you have any</p> <p>11 basis to dispute that the Gingles 3 precondition</p> <p>12 is satisfied in this case?</p> <p>13 ATTORNEY McKNIGHT: Objection; form.</p> <p>14 THE WITNESS: Again, being clear that I</p> <p>15 don't believe it's satisfied, you're correctly</p> <p>16 identifying the key thing that I think needs to</p> <p>17 be done to satisfy that. And absent that, if</p> <p>18 you simply look at the degree of difference</p> <p>19 between the voting groups, then that has been</p> <p>20 met here.</p> <p>21 BY ATTORNEY THEODORE:</p> <p>22 Q. I'm just going to ask you again because I think</p> <p>23 it's a pretty simple question. And I understand</p> <p>24 that you don't agree with the premise, but if</p> <p>25 one were to accept the existence or not of</p> <p style="text-align: right;">74</p>	<p>1 other than partisan polarized voting.</p> <p>2 My view, you don't meet Gingles 3</p> <p>3 without some evidence that there is something</p> <p>4 going on here that is not just partisan voting</p> <p>5 or policy voting or, you know, preference</p> <p>6 voting. I don't think there is -- that you can</p> <p>7 divorce that from this, but if you -- you know,</p> <p>8 if you want to -- if you want to make that the</p> <p>9 legal position that we divorce that from</p> <p>10 anything to do with what might explain this, in</p> <p>11 this case, Dr. Collingwood's analysis shows that</p> <p>12 there is partisan polarized voting. He doesn't</p> <p>13 show anything more than that in the results.</p> <p>14 And so if that's enough to meet the standard, it</p> <p>15 meets the standard. If it's not, then it</p> <p>16 doesn't.</p> <p>17 I'm not disputing that this is a</p> <p>18 sufficient separation in voting behavior on the</p> <p>19 basis of the partisan elections to fit that sort</p> <p>20 of basic fact pattern you've been talking about.</p> <p>21 So if that's -- if the demonstration of partisan</p> <p>22 polarized voting is sufficient to meet</p> <p>23 Gingles 3, then you've met Gingles 3 here.</p> <p>24 BY ATTORNEY THEODORE:</p> <p>25 Q. Is your view that for Gingles 3 it's important</p> <p style="text-align: right;">76</p>

<p>1 to show that white voters are voting in an</p> <p>2 intentionally discriminatory manner? Is that</p> <p>3 your view?</p> <p>4 A. No.</p> <p>5 Q. So when you say discriminatory, what do you</p> <p>6 mean?</p> <p>7 A. I'm not exactly sure what we mean there. All</p> <p>8 I'm trying to distinguish is that the court</p> <p>9 going as far as I know through the entire</p> <p>10 history of litigation on Section 2 and certainly</p> <p>11 clearly in the Gingles decision which is where</p> <p>12 this idea of one group voting differently from</p> <p>13 another sufficient comes from, the court has</p> <p>14 consistently held that this has to be a voting</p> <p>15 pattern that interacts with whether it's</p> <p>16 discrimination or animosity, something, it has</p> <p>17 to interact with race some way beyond just being</p> <p>18 an expression of partisan differences, policy</p> <p>19 differences, geographic preferences.</p> <p>20 It's true that's why the majority of</p> <p>21 the court in the Gingles decision did not agree</p> <p>22 with Brennan's -- Brennan's proposing exactly</p> <p>23 the standard you're proposing, and the majority</p> <p>24 of the court disagreed with it. And as far as I</p> <p>25 can tell, that was -- that reflects both the</p> <p style="text-align: right;">77</p>	<p>1 THE WITNESS: I think that's -- yeah, I</p> <p>2 believe that's correct.</p> <p>3 BY ATTORNEY THEODORE:</p> <p>4 Q. And your results show that as well?</p> <p>5 A. My results -- yeah, I think they would show that</p> <p>6 as well. Again, I'm not using my results for my</p> <p>7 report, but they're in the report and I think</p> <p>8 they would show the same thing. They should.</p> <p>9 Q. Okay. And Dr. Collingwood's results show that</p> <p>10 racially polarized voting is higher in the</p> <p>11 demonstration area and in Senate Districts 1 and</p> <p>12 2 than it is across the state as a whole,</p> <p>13 correct?</p> <p>14 ATTORNEY McKNIGHT: Objection; form.</p> <p>15 THE WITNESS: Again, I just want to</p> <p>16 make sure -- so the level of partisan</p> <p>17 polarization is higher statewide than it is in</p> <p>18 the two senate districts and higher in the two</p> <p>19 senate districts -- or higher in the</p> <p>20 demonstration area than in the two senate</p> <p>21 districts. So, yes, there's less -- there's</p> <p>22 less political polarization statewide than there</p> <p>23 is in the senate districts and -- yeah.</p> <p>24 So again, I just want to be careful</p> <p>25 because I'm not saying that that is legally</p> <p style="text-align: right;">79</p>
<p>1 cases prior to Gingles and is reflected in cases</p> <p>2 after Gingles. And so if that is the standard,</p> <p>3 then you need to show that there is some</p> <p>4 connection beyond simply partisan or policy</p> <p>5 differences, that is, that having partisan or</p> <p>6 policy -- partisan preferences among white or</p> <p>7 black voters equally situated doesn't rise to</p> <p>8 the level of a violation of the</p> <p>9 Voting Rights Act.</p> <p>10 Q. All right. Bring back to the results,</p> <p>11 Dr. Collingwood's results show that racially</p> <p>12 polarized voting is higher in the demonstration</p> <p>13 area across all four election years than in</p> <p>14 Senate District 1 and 2, correct?</p> <p>15 ATTORNEY McKNIGHT: Objection; form.</p> <p>16 THE WITNESS: Again, it looks like</p> <p>17 there's less white crossover voting in the</p> <p>18 demonstration area. I think that would be</p> <p>19 correct compared to, say, just statewide, for</p> <p>20 example.</p> <p>21 BY ATTORNEY THEODORE:</p> <p>22 Q. And less white crossover voting in the</p> <p>23 demonstration area compared to Senate District 1</p> <p>24 and 2, correct?</p> <p>25 ATTORNEY McKNIGHT: Objection; form.</p> <p style="text-align: right;">78</p>	<p>1 significant racially polarized voting.</p> <p>2 BY ATTORNEY THEODORE:</p> <p>3 Q. All right. Let me help you out and then ask the</p> <p>4 question using the term white crossover voting.</p> <p>5 Dr. Collingwood's results show that</p> <p>6 white crossover voting is lower in the</p> <p>7 demonstration area and in Senate Districts 1 and</p> <p>8 2 than it is across the state as a whole?</p> <p>9 ATTORNEY McKNIGHT: Objection to form.</p> <p>10 THE WITNESS: Correct.</p> <p>11 BY ATTORNEY THEODORE:</p> <p>12 Q. And that's true across all four years?</p> <p>13 ATTORNEY McKNIGHT: Same objection.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: I'm going -- this is not</p> <p>16 a comparison I've directly made, but I think</p> <p>17 that would be true.</p> <p>18 BY ATTORNEY THEODORE:</p> <p>19 Q. Okay. You agree that an analysis of racially</p> <p>20 polarized voting and white crossover voting</p> <p>21 needs to be localized, correct?</p> <p>22 ATTORNEY McKNIGHT: Objection; form.</p> <p>23 THE WITNESS: I mean, I think it's</p> <p>24 useful to have a localized analysis. I don't</p> <p>25 think it's always possible to have one or if</p> <p style="text-align: right;">80</p>



<p>1 it's -- I'm not sure it's necessary to have one, 2 but certainly localized in the sense that you're 3 in the jurisdiction you're talking about 4 certainly helpful, and I think where possible 5 the inquiry should be local rather than global. 6 So I don't think I disagree, but I 7 don't think it -- sometimes it just isn't 8 possible to localize it and so you work in an 9 area that's maybe larger than say, for example, 10 a challenged district in a single-member 11 district system may not be any way of doing 12 that. So I don't think it has to be, but I 13 think it's probably preferable if the analysis 14 can be done to some level of reliability. 15 BY ATTORNEY THEODORE: 16 Q. Okay. And you agree that levels of white bloc 17 voting might be different in different parts of 18 a state, correct? 19 A. Yes. 20 Q. And you agree that levels of white crossover 21 voting might be different in different parts of 22 a state, correct? 23 A. Yes, that's correct. 24 Q. And you agree that levels of white bloc voting 25 might be different in -- even in neighboring</p> <p style="text-align: right;">81</p>	<p>1 compared to rural, for example, there's a large 2 variation in the portion of white voters voting 3 Democratic. 4 And since the district's performance is 5 just an issue of whether the district is a 6 Democratic district or not, then what it takes 7 to create a Democratic district out of a mix of 8 black and white voters is going to depend on 9 their relative proportion of Democratic voters 10 and that will vary from one part of the state to 11 another. 12 BY ATTORNEY THEODORE: 13 Q. Okay. So to determine whether a particular 14 district is going to perform, you need to 15 consider the level of white crossover voting in 16 that particular district in particular. Is that 17 fair? 18 A. I mean, that's one way of looking at it. I 19 mean, you need to -- you need to assess whether 20 the district is going to be a majority 21 Democratic district. If it is, then it will 22 perform, and if it isn't, it will not perform by 23 your definition of performance. 24 So you can think a lot of different 25 ways of looking at that, but that's -- the</p> <p style="text-align: right;">83</p>
<p>1 counties or neighboring districts, correct? 2 A. Yes. That's not -- in my experience, that's not 3 at all uncommon. 4 Q. Not at all uncommon? 5 A. Correct. 6 Q. Okay. And same is true for levels of white 7 crossover voting? 8 A. Yes. 9 Q. Okay. And because levels of white bloc voting 10 or white crossover voting differ in different 11 regions of a state, would you agree that the 12 possibility that one district can elect black 13 preferred candidates at a particular BVAP 14 percentage does not indicate that a differently 15 composed district would be able to elect black 16 preferred candidates at a particular BVAP 17 percentage? 18 ATTORNEY McKNIGHT: Objection; form. 19 Go ahead. 20 THE WITNESS: The ability to elect is 21 just an issue of the Democratic proportion of 22 vote in the district, and so in different areas, 23 different -- you'll have variation -- you'll 24 have fairly little variation in the proportion 25 of blacks that are voting Democratic, but</p> <p style="text-align: right;">82</p>	<p>1 question is ultimately not about white crossover 2 voting per se, it's just about the level of 3 the -- the net level of Democratic voting in the 4 district. That's the only indicator here of 5 so-called performance of the district is just 6 whether the district is a majority Republican 7 district or a majority Democratic district. 8 Q. Okay. And because white crossover voting may 9 differ between districts that are differently 10 composed, even districts that are near each 11 other that are differently composed, you need to 12 look at the particular district to determine 13 whether that district will perform. Is that 14 fair? 15 ATTORNEY McKNIGHT: Objection; form. 16 THE WITNESS: I think it's the case 17 that two adjacent similar districts on a variety 18 of measures will perform -- may perform 19 differently depending, again, on the 20 proportion whether the district is majority 21 Democratic or majority Republican. 22 So two districts can be side by side 23 and one can be majority Democratic and the other 24 majority Republican and one of those will 25 perform and the other one won't.</p> <p style="text-align: right;">84</p>



<p>1 BY ATTORNEY THEODORE:</p> <p>2 Q. And would anything about that answer change if</p> <p>3 you were considering two districts that had</p> <p>4 overlapping populations but not identical</p> <p>5 populations?</p> <p>6 ATTORNEY McKNIGHT: Same objection.</p> <p>7 THE WITNESS: Again, if we're just</p> <p>8 talking about what's possible, obviously, it</p> <p>9 would depend on the nature of the overlap, but</p> <p>10 it is possible for two districts with</p> <p>11 overlapping population, for one of those</p> <p>12 districts to be a Republican district and one to</p> <p>13 be a Democratic district and that would make</p> <p>14 them perform differently.</p> <p>15 BY ATTORNEY THEODORE:</p> <p>16 Q. All right. Do you believe that in analyzing</p> <p>17 racially polarized voting, more recent elections</p> <p>18 are generally more probative or relevant than</p> <p>19 older elections?</p> <p>20 A. I think that's generally true, yes.</p> <p>21 Q. Let's turn to Dr. Collingwood's performance</p> <p>22 analysis.</p> <p>23 Dr. Collingwood conducted a separate</p> <p>24 analysis of the performance of certain senate</p> <p>25 districts using the results from statewide</p> <p style="text-align: right;">85</p>	<p>1 Q. Okay. And you didn't replicate the performance</p> <p>2 analysis of -- he does using statewide elections</p> <p>3 for Senate District 1 and 2 or for any of the</p> <p>4 demonstration districts, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you could have replicated that or analyzed</p> <p>7 that, but you chose not to; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And for his performance analysis, he</p> <p>10 focuses on statewide elections from 2016, 2018,</p> <p>11 2020, and 2022, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And your report does not disclose any criticism</p> <p>14 of that choice, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You yourself do not analyze any additional</p> <p>17 elections for any purpose, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. You could have but chose not to?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. You agree that there are no endogenous</p> <p>22 elections available for analysis in this case</p> <p>23 because Senate Districts 1 and 2 have not been</p> <p>24 used before in any election; is that correct?</p> <p>25 A. No. Truly endogenous elections, general</p> <p style="text-align: right;">87</p>
<p>1 elections in 2016, 2018, 2020, and 2022,</p> <p>2 correct?</p> <p>3 A. That sounds correct.</p> <p>4 Q. And he also conducted a performance analysis of</p> <p>5 the demonstration districts offered by the</p> <p>6 plaintiffs, correct?</p> <p>7 A. I believe that's correct, yes.</p> <p>8 Q. Okay. And you discussed this on page 15 of your</p> <p>9 report, correct?</p> <p>10 A. Correct.</p> <p>11 Q. You're not disputing any conclusion that he</p> <p>12 offers relating to performance analysis of any</p> <p>13 district, correct?</p> <p>14 ATTORNEY McKNIGHT: Objection; form.</p> <p>15 THE WITNESS: I'm not sure I know</p> <p>16 exactly what you're referring to, but I'm not</p> <p>17 arguing with what he shows to be the Democratic</p> <p>18 performance or the Republican performance of any</p> <p>19 of the district.</p> <p>20 I will say where I did some analysis</p> <p>21 and made an effort to make sure that we're</p> <p>22 basically talking about the same thing with the</p> <p>23 EI analysis, I did not replicate his BVAP</p> <p>24 analysis, so I'm just taking it at face value.</p> <p>25 BY ATTORNEY THEODORE:</p> <p style="text-align: right;">86</p>	<p>1 elections haven't taken place in those</p> <p>2 districts.</p> <p>3 Q. Endogenous primary elections haven't taken place</p> <p>4 in those districts either, correct?</p> <p>5 A. We're talking about the -- we're talking about</p> <p>6 the adopted districts or the demonstration</p> <p>7 districts?</p> <p>8 Q. The adopted districts.</p> <p>9 A. I didn't -- I didn't look at primary elections,</p> <p>10 so I don't know. I just know in general</p> <p>11 elections. Obviously, the 2024 general</p> <p>12 elections haven't taken place because I'm</p> <p>13 teaching a course on predicting the 2024</p> <p>14 elections.</p> <p>15 Q. All right. But if you'll accept my</p> <p>16 representation that there were no primaries in</p> <p>17 these districts in 2024, that would mean there</p> <p>18 were no endogenous elections either general or</p> <p>19 primary or Senate Districts 1 and 2 available</p> <p>20 for analysis, correct?</p> <p>21 A. Yes. I'll just say the court doesn't always</p> <p>22 focus as narrowly as they might on the notion of</p> <p>23 endogenous elections. So some will talk about</p> <p>24 truly or entirely or purely endogenous.</p> <p>25 Sometimes the court treats endogenous elections</p> <p style="text-align: right;">88</p>

<p>1 as the type of elections, so we'd say, well, a  2 senate election is what we're concerned with  3 because this is a senate election case or a city  4 council election is what we're concerned with  5 because it's a city council case.</p> <p>6 Truly endogenous means not just the  7 type of election but then if you're going to  8 talk about the district, it means an election  9 inside the district. I would say more often  10 than -- maybe as often as not when the court is  11 talking about endogenous elections, they're  12 actually referring to elections to the office at  13 issue. That's -- the usual definition is is  14 this the election of the office at issue rather  15 than some higher level election.</p> <p>16 But technically, to be entirely the  17 election on all fours, it would -- you could  18 narrow the definition to being an election in  19 the actual district.</p> <p>20 Q. All right. You've offered opinions on  21 performance analysis in prior cases, correct?  22 A. Correct.  23 Q. And that's sometimes also called reconstituted  24 election analysis, correct?  25 A. Correct.</p> <p style="text-align: right;">89</p>	<p>1 the one that we're analyzing, it wouldn't be  2 appropriate to use that prior state senate race  3 for purposes of a performance analysis of the  4 new district.</p> <p>5 Do you agree with that statement?  6 ATTORNEY McKNIGHT: Objection; form.  7 THE WITNESS: I mean, just throwing it  8 in as is, you know, I guess will depend on what  9 it is you're trying to assess about the  10 district, but -- particularly, at a minimum, I  11 would think you would want a footnote about that  12 because it does raise questions about what  13 you're actually comparing apples to oranges,  14 whatever.</p> <p>15 So I don't know. It's not -- in my  16 view, that would be -- that would be something  17 that would suggest that you look at that result  18 with some caution or at least understanding what  19 it is the result is telling you because you  20 are -- and I'm not sure it depends entirely on  21 the election being uncontested, but you're  22 looking at -- when you're putting two different  23 elections into a -- into a district context,  24 there are always issues about the fact that  25 that's not a -- not the -- the results don't</p> <p style="text-align: right;">91</p>
<p>1 Q. All right. And you agree that when conducting a  2 performance analysis or a reconstituted election  3 analysis of a new district using results of  4 prior elections, it's best to use prior  5 statewide exogenous elections where the race was  6 contested throughout the entire district?</p> <p>7 A. That's going to be -- I would say that's  8 generally the case and certainly gives you the  9 broadest level of comparison because  10 you're -- you often will not be able to  11 cover -- not always the case, but you often will  12 not be able to cover the entire district if  13 you're dealing with something other than  14 statewide elections.</p> <p>15 So I'd say that's generally the  16 practice, and I think it's -- I think it's a  17 general -- it's a generally accepted way of  18 doing reconstituted elections and more often  19 than not, that's the way it's done and the way I  20 would do it.</p> <p>21 Q. Okay. And you referenced this a little bit in  22 your past answer.</p> <p>23 If a prior state senate race in a prior  24 version of a state senate district was  25 uncontested in a portion of the new district,</p> <p style="text-align: right;">90</p>	<p>1 indicate what all of the voters in the -- in the  2 new or demonstration district doesn't indicate  3 they're all facing the same election  4 environment.</p> <p>5 Again, that's one of the reasons why  6 you -- using the statewide election to avoid  7 that issue. I don't think it makes the purely  8 endogenous completely irrelevant, but certainly  9 something you want to be fully informed about  10 what it is you were comparing.</p> <p>11 BY ATTORNEY THEODORE:  12 Q. Okay. Let's turn to your RPV analysis that you  13 conduct in your report, that you conduct with  14 Dr. Stevenson.</p> <p>15 So your report includes tables  16 reflecting your own EI point estimates for  17 racially polarized voting in North Carolina  18 statewide in the demonstration area and in  19 Senate Districts 1 and 2, correct?</p> <p>20 A. What are we looking at? I'm sorry.  21 Q. I'm sorry. We can flip if you want to. I think  22 it's the appendix of your report.  23 A. Yes. I want to make sure we're talking about  24 the appendix, not the tables.  25 Q. All right. So the appendix of your report</p> <p style="text-align: right;">92</p>

<p>1 includes tables reflecting your own EI point 2 estimates for racially polarized voting in 3 North Carolina statewide in the demonstration 4 area and in Senate Districts 1 and 2, correct? 5 A. Correct. 6 Q. Okay. And you said that your colleague Randy 7 Stevenson created the code for this EI analysis; 8 is that correct? 9 A. Yes. So we worked together on -- we developed 10 a programming statements that did the analysis 11 the way we think is appropriate. And they're 12 not identical to the entire program that 13 Dr. Collingwood uses and reported, but they're 14 very, very similar, and they produced very 15 similar estimate. 16 Q. Okay. What's the code base and the programs 17 that Dr. Stevenson uses to run your EI 18 estimates? 19 A. So it's a combination of R code, programming R 20 code, calling the R x C routine in R to do the 21 actual EI analysis, and then some data -- some 22 of the data work is actually done in Stata to 23 get the in the data form to read into the -- 24 that the R program needs to read it into the 25 R x C analysis.</p> <p style="text-align: right;">93</p>	<p>1 based on Collingwood. 2 So if Collingwood -- if we were 3 analyzing elections Collingwood hadn't analyzed, 4 then what would have been provided to me in a 5 spreadsheet form would have been our results in 6 a spreadsheet form which would then come into 7 the tables in the report, but the purpose here 8 wasn't to provide me with a spreadsheet that I 9 could report for these elections but to provide 10 me with a spreadsheet that merged Collingwood's 11 output with the output coming from our analysis, 12 and that's what you see here. 13 So this is what I -- this is what was 14 provided to me because that's the question I 15 asked Dr. Stevenson to address. 16 If we had added an election, then he 17 would have provided a different spreadsheet, a 18 spreadsheet of the results of our results that I 19 would be using in the report. 20 Q. And by what you see here, you're referring to 21 the tables in your Appendix A, correct? 22 Dr. Alford, did you hear the question? 23 A. I thought I said correct. Sorry. 24 Q. Okay. Great. 25 Okay. So Dr. Stevenson -- so the</p> <p style="text-align: right;">95</p>
<p>1 Q. And did you review Dr. Stevenson's R code before 2 he pressed the button to do the analysis? 3 A. Yeah. So we developed that working together 4 over 20 years of cases. So, yes, I reviewed the 5 code. 6 Q. Okay. So when Dr. Stevenson presses the button 7 that outputs the EI analysis, how does the code 8 or Stata, how are the EI point estimates 9 reflected in your report appendix outputted? 10 A. They are -- they come out as the point 11 estimates, and they're -- he provides them to me 12 in a -- sort of a tabular form in an Excel 13 spreadsheet. 14 Q. In an Excel spreadsheet. Okay. 15 Did you turn over that Excel 16 spreadsheet in your backup data in this case? 17 A. I do not know. So ultimately the Excel 18 spreadsheet -- in this case, what I asked him to 19 provide me in a spreadsheet was what you see 20 here because I'm not relying on -- my question 21 for him was to perform the analysis, tell me if 22 it's -- if we can confirm what Collingwood is 23 doing, and so he provides me this, what we see 24 here, and on that basis I decided to go with 25 Collingwood so everything I do after that is</p> <p style="text-align: right;">94</p>	<p>1 results of your code come in a spreadsheet form 2 that would have just included your results, not 3 Dr. Collingwood's results, correct? 4 A. I would -- so the results that I'm seeing are 5 the results that are in the appendix. That's 6 what I asked for him to produce for me because 7 that was the purpose here. 8 Where those results came out or how 9 they were fit into the spreadsheet, I don't know 10 for sure. Dr. Stevenson would know. 11 Q. Okay. But just as a matter of logic, what his 12 code produced would necessarily be a spreadsheet 13 that only contained your EI results, not 14 Dr. Collingwood's EI results, correct? 15 A. I don't know -- so I asked for the results in a 16 spreadsheet form because that's the way -- it's 17 the most convenient for me to produce tables. 18 Whether -- the output from the program does not 19 necessarily sort of coming out as an Excel 20 speed. It could come out as comma separated 21 values, it could got to a Stata dataset. So 22 what the immediate form is before this is 23 produced might or might not be an Excel 24 spreadsheet. 25 Q. And you didn't turn over to us the intermediate</p> <p style="text-align: right;">96</p>

<p>1 form that the code produced before you -- you or 2 Dr. Stevenson turned it into the document we see 3 here in Appendix A, correct? 4 A. Again, I would have to look back over what was 5 turned over, but certainly this was -- this was 6 turned over and this is what I had asked for as 7 the output product. 8 Whether the intermediate part exists or 9 how that was done or whether it was disclosed, I 10 don't know without looking back over the 11 disclosure. 12 ATTORNEY THEODORE: All right. I'm 13 going to mark -- transmit this document in the 14 chat and mark it as Exhibit 4. 15 (WHEREUPON, Plaintiff's Exhibit 4 was 16 marked for identification.) 17 BY ATTORNEY THEODORE: 18 Q. All right. Do you have that open, Dr. Alford? 19 A. Yes. 20 Q. And does this -- so this is a screenshot of the 21 folder structure for your backup data with all 22 of the folders under the program -- programs 23 folder expanded. 24 Do you recognize that the folders in 25 the files shown here are the backup files that</p> <p style="text-align: right;">97</p>	<p>1 file that you produced as part of your backup 2 materials? 3 A. Yes. 4 Q. All right. And this is explaining how to 5 replicate the EI analysis that you conducted, 6 correct? 7 A. Correct. 8 Q. Do you see the sixth bullet? 9 A. Yes. 10 Q. And it says: 11 "Next, run one of the following 12 Stata scripts that reads the EI data 13 above and produces EI results. For 14 example, EI_2016_GE_regional_loop.do." 15 Did I read that correctly? 16 A. Yes. 17 Q. Is EI_2016_GE_regional_loop.do the Stata script 18 that runs the EI analysis for 2016 elections for 19 the demonstration area? 20 A. That's what it suggests, yes. 21 Q. And after what I just read in the sixth bullet 22 in your read me file, the file says: 23 "This file also relies on an R 24 program that is called by Stata e.g., 25 GenericRxC_EI_NCarolina_2016GE.R,</p> <p style="text-align: right;">99</p>
<p>1 you transmitted in this case? 2 A. That looks to me to be correct. 3 Q. Okay. Do you see in this backup data any of the 4 intermediate production files that we were just 5 talking about? 6 A. I mean, there are lots of files here with lots 7 of different names. I don't see something that 8 would immediately jump out to me as being those 9 files, but, again, I would have to go back 10 through and look. 11 So, yeah, I don't know what the status 12 of the intermediate files is or whether they're 13 here or not. I just know what I asked for was 14 the appendix that's in the report. 15 Q. Okay. I'm going to transmit a copy of -- the 16 next exhibit shall mark as Exhibit 5, and this 17 is a copy of the "read me" document that was 18 part of your backup files. 19 Do you see that? 20 (WHEREUPON, Plaintiff's Exhibit 5 was 21 marked for identification.) 22 BY ATTORNEY THEODORE: 23 Q. Are you there, Dr. Alford? 24 A. Yes. 25 Q. And does this look like a copy of the "read me"</p> <p style="text-align: right;">98</p>	<p>1 with the specific R script used for 2 any specific run indicated in the call 3 to R at the bottom of the Stata file." 4 Did I read that correctly? 5 A. Yes. 6 Q. So first you need the Stata script, and then to 7 replicate your analysis, you need this R program 8 that's called GenericRxC_EI_NCarolina_2016GE.R, 9 correct? 10 A. That's correct. 11 Q. And then there's going to be a similar R program 12 to replicate the results for 2018, 2020, and 13 2022 elections; is that correct? 14 A. Correct. 15 Q. Okay. Did you provide any of those R programs 16 in your backup data? 17 A. The R program should be -- so if the R program 18 is being called by Stata, then the R program 19 should be there. 20 Q. All right. 21 A. Everything -- our intention at least was to 22 provide everything, including the detailed 23 instruction to allow anybody who wanted to to 24 modify those scripts to narrowly in the sense of 25 just changing them to point to their own</p> <p style="text-align: right;">100</p>

<p>1 computer and then to run them as is and get</p> <p>2 exactly the analysis we get.</p> <p>3 Q. Okay. And let's turn back to Exhibit 4 which</p> <p>4 was the index of your backup materials.</p> <p>5 A. Yes.</p> <p>6 Q. Are you there?</p> <p>7 A. Yes.</p> <p>8 Q. Do you see the GenericRxC_EI_NCarolina_2016GE.R</p> <p>9 program anywhere in the list of programs that</p> <p>10 you transmitted?</p> <p>11 A. So I can't tell, is all this fully expanded? It</p> <p>12 looks like there are folders that aren't</p> <p>13 expanded.</p> <p>14 Q. I believe the only folders that aren't expanded</p> <p>15 are the folders under the input data folder.</p> <p>16 A. So I don't see the R program that is being</p> <p>17 called, but I'm also not seeing -- yeah, I'm not</p> <p>18 seeing the R program that's called.</p> <p>19 Q. And you're not seeing the R program that's being</p> <p>20 called for 2018, 2020, or 2022 either, correct?</p> <p>21 A. Correct.</p> <p>22 Q. All right. So the four key files that would</p> <p>23 allow replication of your EI results were</p> <p>24 missing from your backup data; is that right?</p> <p>25 A. Yeah. I would want -- you know, I would want to</p> <p style="text-align: right;">101</p>	<p>1 analysis or EI analysis without it. Collingwood</p> <p>2 has already done that.</p> <p>3 Our intention was to do something as</p> <p>4 close as possible to what he did, and that's</p> <p>5 what you'll see -- or what you would see in that</p> <p>6 R code. And again, I'm happy to provide that if</p> <p>7 it wasn't, if it was for whatever reason</p> <p>8 inadvertently not included in this very large</p> <p>9 set of files and folders, but it's certainly</p> <p>10 possible to -- we could have done this same</p> <p>11 analysis without Collingwood's R files because</p> <p>12 we're perfectly capable of doing this and</p> <p>13 obviously he's capable of doing the analysis</p> <p>14 because he did it and got the same results.</p> <p>15 Q. I'm just asking very simply, it's not possible</p> <p>16 to replicate the precise numbers that you</p> <p>17 produced without those R files, correct?</p> <p>18 A. That would be correct.</p> <p>19 Q. Okay. All right. And you have not offered any</p> <p>20 opinion that your RPV estimates are more</p> <p>21 accurate or reliable than Dr. Collingwood's,</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And you agree, based on your experience in</p> <p>25 previous cases, that Dr. Collingwood's EI</p> <p style="text-align: right;">103</p>
<p>1 go back through -- actually, you know, get the</p> <p>2 file in front of me and go back through</p> <p>3 everything to make sure it wasn't -- didn't end</p> <p>4 up in the wrong place, but at least from what I</p> <p>5 see here, I'm not seeing those -- the R files</p> <p>6 that we indicated should be there.</p> <p>7 Q. And it's not actually possible to replicate your</p> <p>8 EI analysis without those R files, right?</p> <p>9 A. Yeah, it certainly -- well, it's not impossible,</p> <p>10 but our intention was to make it as simple and</p> <p>11 as accurate as possible and therefore to provide</p> <p>12 those files. That's why they're in the</p> <p>13 instructions.</p> <p>14 Q. Well, it wouldn't be possible -- I'm sorry. Go</p> <p>15 ahead.</p> <p>16 A. If they're not provided because of an oversight</p> <p>17 when things are getting bundled up, well,</p> <p>18 certainly we would have been happy to address</p> <p>19 that and we're happy to address that now.</p> <p>20 Q. I understand. I'm just asking a very simple</p> <p>21 question which is it's not possible to replicate</p> <p>22 your EI analysis without those R files; is that</p> <p>23 correct?</p> <p>24 A. I guess it depends on what you mean by</p> <p>25 replication. It is possible to do a similar R</p> <p style="text-align: right;">102</p>	<p>1 analysis is trustworthy?</p> <p>2 ATTORNEY McKNIGHT: Objection; form.</p> <p>3 THE WITNESS: I would say based on the</p> <p>4 cases I've been involved in in which</p> <p>5 Dr. Collingwood has provided EI analysis, I've</p> <p>6 always been able to replicate it. And I think</p> <p>7 he's a capable EI analyst. I think he does</p> <p>8 relatively careful work, so I -- among other</p> <p>9 experts, I would put him among the group who I</p> <p>10 would typically not expect to see any difference</p> <p>11 between my analysis and his analysis. I don't</p> <p>12 believe we've ever had a disagreement on a point</p> <p>13 of analysis save the first case in which I saw</p> <p>14 Dr. Collingwood when he was working for</p> <p>15 Dr. Barreto.</p> <p>16 BY ATTORNEY THEODORE:</p> <p>17 Q. The estimates listed in your tables and your</p> <p>18 appendix are EI point estimates, correct?</p> <p>19 A. Correct.</p> <p>20 Q. What's an EI point estimate?</p> <p>21 A. It is the -- it's the EI result that's -- I'm</p> <p>22 not sure exactly how you would want to</p> <p>23 characterize that, but it's the result that EI</p> <p>24 analysis produces that indicates the central</p> <p>25 tendency of the EI analysis across the</p> <p style="text-align: right;">104</p>

<p>1       precincts. So, for example, if it's 98 percent</p> <p>2       that's telling us that the EI program is having</p> <p>3       run for some period of time has concluded that</p> <p>4       that's the point estimate that best represents</p> <p>5       the -- its analysis across the data you</p> <p>6       provided.</p> <p>7       Q. All right. You don't report confidence</p> <p>8       intervals for your EI point estimates in your</p> <p>9       report, correct?</p> <p>10      A. That's correct.</p> <p>11      Q. Did you calculate confidence intervals for your</p> <p>12      EI estimates?</p> <p>13      A. I would assume. I don't think -- our standard</p> <p>14      program outputs credible intervals, so, yeah, I</p> <p>15      assume there are credible intervals.</p> <p>16             I'm not relying on those credible</p> <p>17      intervals in either my analysis or</p> <p>18      Dr. Collingwood's, but, yes, the analysis -- I</p> <p>19      mean, you have to ask for it, but we would</p> <p>20      typically ask for the credible intervals as well</p> <p>21      as the point estimate.</p> <p>22      Q. Okay. And the program -- when Dr. Stevenson</p> <p>23      presses the button, does the program generate</p> <p>24      confidence intervals automatically?</p> <p>25      A. The program -- yes, the program typically</p> <p style="text-align: right;">105</p>	<p>1       Harris is small and therefore falls within the</p> <p>2       confidence interval, and so we can't be</p> <p>3       sure -- we can't reject the null hypothesis that</p> <p>4       Trump is the leader or the null hypothesis that</p> <p>5       Kamala Harris is leading, and so that's sort of</p> <p>6       a standard. Again, it's a mathematical</p> <p>7       calculation based on deviations.</p> <p>8             Credible intervals, the EI technique is</p> <p>9       not the same kind of technique and so it</p> <p>10      doesn't -- it would not be appropriate to rely</p> <p>11      on the calculated intervals based on deviations</p> <p>12      within the aggregate data. And so what the EI</p> <p>13      does is basically it produces -- actually</p> <p>14      produces a very large series of point estimates</p> <p>15      and then you look at the distribution of those</p> <p>16      point estimates, the center of that distribution</p> <p>17      is the point estimate, and then you actually</p> <p>18      look physically at the upper and lower bound</p> <p>19      that together contain 95 percent of the</p> <p>20      estimated point estimates in the repeated draws</p> <p>21      of the EI program.</p> <p>22             And so the confidence interval is a</p> <p>23      calculated interval. A credible interval is an</p> <p>24      actual distribution of reported point estimates,</p> <p>25      and it tells you that 95 percent of the point</p> <p style="text-align: right;">107</p>
<p>1       extracts both point estimates and credible</p> <p>2       intervals, not confidence intervals, but</p> <p>3       credible intervals.</p> <p>4       Q. What's the difference between a credible</p> <p>5       interval and a confidence interval?</p> <p>6       A. So a confidence interval -- if you do an</p> <p>7       ordinary least squares regression where you take</p> <p>8       a sample mean or something like that, you get a</p> <p>9       confidence interval which is a mathematical</p> <p>10      calculation based on the variation that's</p> <p>11      present and suggests sort of the confidence</p> <p>12      interval we typically think of that case in</p> <p>13      social scientist as a 95 percent interval, so</p> <p>14      we're confident that based on sampling</p> <p>15      distribution, for example, that in the actual</p> <p>16      value out in the real world would fall within</p> <p>17      that upper and lower bound 95 percent of the</p> <p>18      time and so that less than 5 percent of the time</p> <p>19      we expect the calculated point estimate to be</p> <p>20      outside of that -- outside of that range around</p> <p>21      the action.</p> <p>22             So we see this all the time in election</p> <p>23      analysis and currently particularly I think in</p> <p>24      every one of the states that matter, the</p> <p>25      difference between Donald Trump and Kamala</p> <p style="text-align: right;">106</p>	<p>1       estimates that the EI program has produced in</p> <p>2       that stage are within that upper and lower</p> <p>3       bound, so it tells you about how narrowly the</p> <p>4       estimates are varying in repeated runs of</p> <p>5       the -- repeated iterations. So this is an</p> <p>6       iterative technique that iterates loss of times,</p> <p>7       10,000 times, a hundred thousand times, a</p> <p>8       million times, and the question is what does the</p> <p>9       distribution of possible point estimates look</p> <p>10      like in that actual world versus some</p> <p>11      mathematical calculation which would be the case</p> <p>12      in a technique like ordinary least squares</p> <p>13      regression.</p> <p>14             They can be interpreted in similar</p> <p>15      ways. They can be used for telling you how</p> <p>16      stable the estimate is. They can be used to</p> <p>17      test the null hypothesis. So here we're not</p> <p>18      actually testing a null hypothesis, and we have</p> <p>19      a fairly large number of elections, fairly large</p> <p>20      number of precincts. I don't think there's</p> <p>21      anything in dispute here about -- that deals</p> <p>22      with that issue about how stable the estimates</p> <p>23      are, nor is there the confidence interval -- or</p> <p>24      sorry -- the null hypothesis that we're testing</p> <p>25      here, so how likely is it that -- I mean, for</p> <p style="text-align: right;">108</p>



<p>1 example, you could test how likely is it that</p> <p>2 black voters actually prefer Josh Stein in the</p> <p>3 2016 AG race given that their point estimate is</p> <p>4 98 percent. And so, you know, if the point</p> <p>5 estimate was, you know, 51 percent, you might be</p> <p>6 interested in what the credible intervals around</p> <p>7 it because it might very well extend below</p> <p>8 50 percent in which case you couldn't say for</p> <p>9 certain whether Josh Stein was the preferred</p> <p>10 candidate for black voters or not, but at</p> <p>11 98 percent, I don't think that's really a</p> <p>12 question.</p> <p>13 Q. Okay.</p> <p>14 A. So in this particular analysis and what I care</p> <p>15 about, at least, those credible intervals are</p> <p>16 not anything that I need to see or make any use</p> <p>17 of.</p> <p>18 Q. Okay. So your understanding is that the program</p> <p>19 would have spit out those credible intervals,</p> <p>20 but you did not look at them for purposes of</p> <p>21 this report; is that accurate?</p> <p>22 A. Again, I don't have the program in front of me,</p> <p>23 but I would say it does not -- when you say spit</p> <p>24 it out automatically, it's not automatically</p> <p>25 produced by the simple call to the Bayesian</p> <p style="text-align: right;">109</p>	<p>1 the credible interval.</p> <p>2 Q. All right. And your backup data that you</p> <p>3 produced in your accompanying report does not</p> <p>4 include any file that contains any credible</p> <p>5 intervals or confidence intervals or any data</p> <p>6 associated with credible intervals or confidence</p> <p>7 intervals; is that correct?</p> <p>8 A. I believe that's correct.</p> <p>9 ATTORNEY THEODORE: I'm going to</p> <p>10 transmit another document in the chat that I'm</p> <p>11 going to mark as Exhibit 6.</p> <p>12 (WHEREUPON, Plaintiff's Exhibit 6 was</p> <p>13 marked for identification.)</p> <p>14 BY ATTORNEY THEODORE:</p> <p>15 Q. Do you have this open?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Do you recognize this as an affidavit</p> <p>18 that you submitted as an expert in the NAACP of</p> <p>19 Spring Valley Branch versus East Ramapo Central</p> <p>20 School District case?</p> <p>21 A. Yes.</p> <p>22 Q. Let's go to page 11, paragraph 38. Are you</p> <p>23 there?</p> <p>24 A. I'm getting there. Page 11, yes.</p> <p>25 Q. And you say:</p> <p style="text-align: right;">111</p>
<p>1 R x C analysis. You have to capture the</p> <p>2 distribution and then look at the -- you know,</p> <p>3 at those distribution points, so you capture the</p> <p>4 upper and the lower panels to get the</p> <p>5 95 percent, but that's something we routinely</p> <p>6 include in the R program we run. And so -- and</p> <p>7 I suspect I can't imagine why we would not have</p> <p>8 included it here.</p> <p>9 Q. So you suspect that Dr. Stevenson would have run</p> <p>10 that and produced that, but you're not sure?</p> <p>11 A. I'm not a hundred percent sure because I'm not</p> <p>12 looking at the actual code, but I would be very</p> <p>13 surprised if it wasn't involved.</p> <p>14 I just want to make sure that I'm not</p> <p>15 saying that any -- any EI run using the R x C</p> <p>16 technique would not of necessity produce the</p> <p>17 credible intervals, unlike -- what, if you run</p> <p>18 OLS, you run ordinary least regression, if you</p> <p>19 just ask for a regression, it typically will by</p> <p>20 default produce a set of statistics that would</p> <p>21 include the confidence interval. It's not for</p> <p>22 the most stripped down call to simply produce</p> <p>23 the point estimates, simply produces the point</p> <p>24 estimates and then you have to look at the</p> <p>25 captured variation in the point estimates to get</p> <p style="text-align: right;">110</p>	<p>1 "The standard practice among</p> <p>2 social scientists and statisticians is</p> <p>3 to accompany specific EI estimates</p> <p>4 (referred to as point estimates) with</p> <p>5 associated confidence intervals."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. Did your report state anywhere that you were not</p> <p>9 following the standard practice among social</p> <p>10 scientists and statisticians in using the EI</p> <p>11 method because you did not accompany your</p> <p>12 specific EI estimates with confidence intervals?</p> <p>13 A. No.</p> <p>14 Q. And the reason that you did not report</p> <p>15 confidence intervals in this case is because you</p> <p>16 think it's appropriate to simply rely on</p> <p>17 Dr. Collingwood's estimates. Is that fair to</p> <p>18 say?</p> <p>19 ATTORNEY McKNIGHT: Objection; form.</p> <p>20 THE WITNESS: I think there's -- it's a</p> <p>21 lengthy subject. We can talk about all kinds of</p> <p>22 things related to that, but, yes, in my</p> <p>23 analysis, I'm not presenting an analysis and</p> <p>24 asking the court to rely on my EI analysis.</p> <p>25 I'm simply doing an EI analysis to</p> <p style="text-align: right;">112</p>



<p>1 check and make sure that I can rely on</p> <p>2 Dr. Collingwood's analysis, and</p> <p>3 Dr. Collingwood's analysis, at least in the</p> <p>4 graphic displayed, includes the -- it's a dot</p> <p>5 plot, so we have the credible intervals</p> <p>6 displayed graphically. And I don't make any use</p> <p>7 of them, nor does he, but if I wanted to,</p> <p>8 they're present in the data that I'm relying on.</p> <p>9 ATTORNEY THEODORE: All right. I think</p> <p>10 this might be a good time to break for lunch if</p> <p>11 that sounds good.</p> <p>12 (Lunch Recess: 12:51 to 1:30 p.m.)</p> <p>13 BY ATTORNEY THEODORE:</p> <p>14 Q. All right. It's Dr. Alford, right, not</p> <p>15 "Dr. Alford"?</p> <p>16 A. Alford, you're correct.</p> <p>17 Q. Dr. Alford, most of your report is focused on</p> <p>18 analyzing the role of the race of the candidate</p> <p>19 in the polarized voting that we see in the</p> <p>20 relevant regions. Is that fair to say?</p> <p>21 A. Yes.</p> <p>22 Q. And for this analysis, you only considered</p> <p>23 Dr. Collingwood's EI results, not your own,</p> <p>24 correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">113</p>	<p>1 A. Yes.</p> <p>2 Q. In Excel?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And you didn't turn over the underlying</p> <p>5 Excel files in your backup data, right?</p> <p>6 A. I'm not sure I know what you mean by underlying</p> <p>7 Excel file.</p> <p>8 Q. You didn't turn over any Excel files relating to</p> <p>9 these reports in your backup data, correct?</p> <p>10 A. I think that's correct, yes.</p> <p>11 Q. How did you determine the race of the candidate</p> <p>12 for purposes of these Tables 1 through 7?</p> <p>13 A. I think that was a combination that I think some</p> <p>14 of the information may have come from lawyers,</p> <p>15 some of it from looking at various sources about</p> <p>16 the campaigns and about the candidates, so a</p> <p>17 variety of sources.</p> <p>18 Q. You have a recollection for at least some of</p> <p>19 these candidates the lawyers sent you a list of</p> <p>20 the race of the candidates?</p> <p>21 A. No. I think there was -- there was some</p> <p>22 discussion about -- about whether that was</p> <p>23 available, and I think the lawyers may at some</p> <p>24 point -- obviously, we've got multiple cases</p> <p>25 going on so I'm not sure if it was in this case</p> <p style="text-align: right;">115</p>
<p>1 Q. Did you ever conduct a similar analysis using</p> <p>2 your own EI estimates?</p> <p>3 A. No.</p> <p>4 Q. Okay. And for this portion of the report, you</p> <p>5 offer a number of tables in which you report the</p> <p>6 race and the party of candidates in various</p> <p>7 combinations of North Carolina elections between</p> <p>8 2016 and 2022, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you report the race and party of those</p> <p>11 candidates next to figures that you've taken</p> <p>12 from Dr. Collingwood's report about the</p> <p>13 percentage of the white and black vote that</p> <p>14 those candidates received in four different</p> <p>15 geographies, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that's statewide the demonstration area and</p> <p>18 Senate Districts 1 and 2?</p> <p>19 A. That's correct.</p> <p>20 Q. And so Tables 1 through 7 all fall within this</p> <p>21 category of table, correct?</p> <p>22 ATTORNEY McKNIGHT: Objection; form.</p> <p>23 THE WITNESS: That's correct.</p> <p>24 BY ATTORNEY THEODORE:</p> <p>25 Q. Okay. Did you personally prepare these tables?</p> <p style="text-align: right;">114</p>	<p>1 or some other case, but I think the lawyers may</p> <p>2 have looked at the codes that were used here</p> <p>3 just to verify that they didn't see anything</p> <p>4 that jumped out at them as mistaken.</p> <p>5 There was some discussion with the</p> <p>6 lawyers about using voter registration to</p> <p>7 validate this particularly for moving beyond the</p> <p>8 statewide candidates and to legislative races,</p> <p>9 if that was going to become an issue, but as it</p> <p>10 happens, that didn't become an issue because</p> <p>11 Dr. Collingwood would not use any of the state</p> <p>12 level -- any of the races below the statewide</p> <p>13 races.</p> <p>14 Q. Okay. So there's no list --</p> <p>15 A. The lawyers never transmitted to me anything</p> <p>16 with a list of candidates and races.</p> <p>17 Q. Okay. Thanks.</p> <p>18 Is the purpose of the analysis that</p> <p>19 you're presenting in Tables 1 through 7 to</p> <p>20 determine whether white voters are choosing not</p> <p>21 to vote for black candidates because those</p> <p>22 candidates are black?</p> <p>23 A. There's a variety of things that you can draw</p> <p>24 from this analysis, so I'm not -- I wouldn't say</p> <p>25 that's the purpose of the analysis, but that</p> <p style="text-align: right;">116</p>

<p>1 is -- that is something you could draw from.</p> <p>2 I would say the purpose of the analysis</p> <p>3 is to demonstrate that the tables and figures</p> <p>4 produced by Dr. Collingwood that purport to show</p> <p>5 that voting is racially polarized and that</p> <p>6 Gingles 2 and 3 have been met, that that</p> <p>7 analysis doesn't show anything more than</p> <p>8 partisan voting.</p> <p>9 Q. All right.</p> <p>10 A. So I see it as illustrating a failure to</p> <p>11 demonstrate something in the analysis provided</p> <p>12 by Dr. Collingwood. That's why my preference is</p> <p>13 to use, as I did here, Dr. Collingwood's</p> <p>14 analysis. It purports to show one thing and</p> <p>15 actually shows something else that he both</p> <p>16 doesn't discuss and which is not immediately</p> <p>17 apparent from his tables.</p> <p>18 Q. All right. Let's turn to your Table 1. That's</p> <p>19 on page 6.</p> <p>20 A. Yes.</p> <p>21 Q. This table considers three elections across</p> <p>22 three different years and only one of them</p> <p>23 involves a black candidate; is that correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And you agree that the overall level of racially</p> <p style="text-align: right;">117</p>	<p>1 55 is obviously important. It changes the</p> <p>2 direction of the vote, but a 10 percent</p> <p>3 difference I think is -- I guess it is what it</p> <p>4 is, yeah.</p> <p>5 In terms of the overall pattern of</p> <p>6 polarization, I would say I would characterize</p> <p>7 the overall pattern of polarization here to be</p> <p>8 that white voting across this entire period is</p> <p>9 well above 95 percent and that black voting and</p> <p>10 white crossover voting again varies in that</p> <p>11 range from 10 to 30 percent, so --</p> <p>12 Q. All right.</p> <p>13 A. I'm looking here and I'm seeing -- statewide,</p> <p>14 I'm seeing a 4 percent difference in the area,</p> <p>15 seeing about a -- what -- so statewide white</p> <p>16 crossover vote is higher in 2022 than 2016, it's</p> <p>17 a little bit lower in the demonstration area,</p> <p>18 it's pretty much the same in District 1, pretty</p> <p>19 much the same in District 2. Maybe I'm missing</p> <p>20 something, but I'm not seeing that.</p> <p>21 Q. I'm sorry. Are you looking at just this table,</p> <p>22 or are you looking at the overall results for</p> <p>23 all the elections in 2016 and 2018, 2020 and</p> <p>24 2022?</p> <p>25 A. I'm looking at the table.</p> <p style="text-align: right;">119</p>
<p>1 polarized voting in the four regions presented</p> <p>2 in this table is different in 2016, 2020, and</p> <p>3 2022 which are the three years presented in this</p> <p>4 table; is that correct?</p> <p>5 ATTORNEY McKNIGHT: Objection; form.</p> <p>6 THE WITNESS: I guess I'm not seeing</p> <p>7 what you're seeing. I don't think --</p> <p>8 BY ATTORNEY THEODORE:</p> <p>9 Q. All right. Let me ask it a different way.</p> <p>10 Based on Dr. Collingwood's overall RPV</p> <p>11 results for 2016, 2020, and 2022, we know that</p> <p>12 racially polarized voting in those years -- the</p> <p>13 levels of racially polarized voting in those</p> <p>14 years changes depending on the year in each of</p> <p>15 the four regions presented in this table; is</p> <p>16 that correct?</p> <p>17 ATTORNEY McKNIGHT: Objection; form.</p> <p>18 THE WITNESS: There's -- I would say</p> <p>19 there's some modest difference in the levels of</p> <p>20 crossover voting across those years.</p> <p>21 BY ATTORNEY THEODORE:</p> <p>22 Q. Would you regard a 10 percent difference as a</p> <p>23 modest difference?</p> <p>24 A. Obviously, it depends on where the 10 percent</p> <p>25 occurs. A 10 percent difference between 45 to</p> <p style="text-align: right;">118</p>	<p>1 Q. I was asking you a question about overall,</p> <p>2 across all election contests. Let's just move</p> <p>3 on.</p> <p>4 Do you think that this table with only</p> <p>5 three elections across different years presents</p> <p>6 sufficient data to draw reliable conclusions</p> <p>7 about whether the race of the candidate has a</p> <p>8 polarizing impact on vote choice?</p> <p>9 ATTORNEY McKNIGHT: Objection; form.</p> <p>10 THE WITNESS: I think it presents</p> <p>11 useful information. I obviously go on to</p> <p>12 present six other tables and cover all of the</p> <p>13 elections that Dr. Collingwood covered, so I</p> <p>14 don't think it's the end of the story, but as it</p> <p>15 happens, it tells -- substantively tells exactly</p> <p>16 the same story as every other table.</p> <p>17 It's certainly not drawing my</p> <p>18 conclusion solely from this table, and it</p> <p>19 obviously isn't the only table in the report.</p> <p>20 It just provides a very simple first look that</p> <p>21 suggests that here where we're simply looking at</p> <p>22 US Senate elections, they look -- they look</p> <p>23 remarkably similar when the Democrat and the</p> <p>24 Republican are white and when the Democrat's</p> <p>25 black and the Republican's white, so that's</p> <p style="text-align: right;">120</p>

<p>1 suggestive.</p> <p>2 And then the question is is that unique</p> <p>3 to these three senate elections or is it the</p> <p>4 case when we look more broadly at all the</p> <p>5 elections in the analysis, and there's nothing</p> <p>6 in this table that's incompatible with what we</p> <p>7 see in the other six tables that cover all of</p> <p>8 the elections.</p> <p>9 BY ATTORNEY THEODORE:</p> <p>10 Q. All right.</p> <p>11 A. So we could rely on this table because you</p> <p>12 wouldn't come to any conclusion you wouldn't</p> <p>13 come to by looking at all the elections, but I'm</p> <p>14 not suggesting that the court do that and I'm</p> <p>15 not suggesting that I did that.</p> <p>16 Q. So let's turn to Table 2 on page 7, and this</p> <p>17 table is a comparison of how white and black</p> <p>18 voters voted in seven state supreme court</p> <p>19 elections between 2016 and 2022; is that</p> <p>20 correct?</p> <p>21 A. That is correct.</p> <p>22 Q. And you say on page 7:</p> <p>23 "If voters were responding to</p> <p>24 the race of the candidates, we would</p> <p>25 expect black voters to provide</p> <p style="text-align: right;">121</p>	<p>1 Q. Okay.</p> <p>2 A. As they would give support to the white</p> <p>3 candidate.</p> <p>4 Q. I'm sorry.</p> <p>5 A. We're talking about the difference between their</p> <p>6 support for the white and the black candidate,</p> <p>7 correct?</p> <p>8 I'm sorry. I'm asking questions. I'm</p> <p>9 not supposed to. I withdraw the question,</p> <p>10 Your Honor.</p> <p>11 I think I've answered your question, I</p> <p>12 hope.</p> <p>13 Q. I think you have.</p> <p>14 Okay. And in fact, this table shows</p> <p>15 that in Senate District 1 where black voters</p> <p>16 supported the white Democratic supreme court</p> <p>17 candidates at rates of 96 percent, they</p> <p>18 supported the black Democratic supreme court</p> <p>19 candidates at 98 percent, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So this table reflects that black voters are</p> <p>22 more supportive of the black Democrat in</p> <p>23 Senate District 1 than of the white Democrat,</p> <p>24 correct?</p> <p>25 A. I don't think that's correct.</p> <p style="text-align: right;">123</p>
<p>1 significantly more support to a black</p> <p>2 candidate."</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. What do you mean there by significantly?</p> <p>6 A. Well, not statistically significantly because</p> <p>7 we're not -- fortunately not in that area at</p> <p>8 this point.</p> <p>9 So substantively significant difference</p> <p>10 of support, you know, perhaps something that</p> <p>11 looked not cohesive or only weakly cohesive for</p> <p>12 white candidates and clearly cohesive for black</p> <p>13 candidates, for example, would indicate that</p> <p>14 black voters are responding to the race of the</p> <p>15 candidate by providing more support to black</p> <p>16 candidates than to white candidates.</p> <p>17 Q. Okay. This table shows that black voters in the</p> <p>18 demonstration area and in District 2 support</p> <p>19 white Democrats for state supreme court at a</p> <p>20 rate of 99 percent, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So how could we expect that black voters would</p> <p>23 provide more support to a black Democrat than</p> <p>24 99 percent?</p> <p>25 A. We wouldn't.</p> <p style="text-align: right;">122</p>	<p>1 Q. Well, 98 percent is more than 96 percent,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. So this table reflects that black voters are</p> <p>5 more supportive of the black Democrat in</p> <p>6 Senate District 1 than of the white Democrat,</p> <p>7 correct?</p> <p>8 A. There's an EI point estimate that in one case is</p> <p>9 96 and the other 98. Again, this is ecological</p> <p>10 inference at the wrong level of analysis, and to</p> <p>11 say that we know on the basis of that that black</p> <p>12 voters provided more support to the black</p> <p>13 candidate than the white candidate, first of</p> <p>14 all, it's extremely marginal difference, and it</p> <p>15 may or may not be real. And so I don't think we</p> <p>16 can draw that conclusion that -- with a</p> <p>17 difference that small in a technique that's this</p> <p>18 remote from what we're trying to analyze, you</p> <p>19 can argue that there is a -- there is a two</p> <p>20 point difference in the point estimate provided</p> <p>21 by the EI analysis, but to say that we therefore</p> <p>22 can convert that to saying there's a two point</p> <p>23 difference in the actual behavior of black</p> <p>24 voters in those two elections, we can't. That's</p> <p>25 simply beyond what this technique can do.</p> <p style="text-align: right;">124</p>

<p>1 Q. Have you reviewed the --</p> <p>2 A. The 98 percent difference between the black</p> <p>3 voters' support for the Democratic and the</p> <p>4 Republican candidate, there's the party. The</p> <p>5 party effect here is 99 percent Democrat,</p> <p>6 1 percent Republican; or 98 percent Democrat,</p> <p>7 2 percent Republican; 96 percent versus</p> <p>8 3 percent. That's the party difference.</p> <p>9 If the race difference is 96 versus 98,</p> <p>10 even if that's a real difference, you're talking</p> <p>11 about what are we comparing here. The effect of</p> <p>12 party is a difference of over 95 percent, then</p> <p>13 the effective race at best in one area is</p> <p>14 2 percentage points.</p> <p>15 I think it's pretty clear what this</p> <p>16 table tells us. It tells us about both partisan</p> <p>17 cohesion and polarization.</p> <p>18 Q. Did you review Dr. Collingwood's confidence</p> <p>19 intervals associated with the estimates it got</p> <p>20 for District 1?</p> <p>21 A. I am sure that at some point I looked at those,</p> <p>22 but I don't recall them off the top of my head.</p> <p>23 Q. Okay. And sitting here today, you can't say</p> <p>24 that this difference would be within the range</p> <p>25 of the confidence intervals. Is that fair?</p> <p style="text-align: right;">125</p>	<p>1 any sense in the same order of magnitude, much</p> <p>2 less being a more powerful force.</p> <p>3 So given that all this table tells us</p> <p>4 is that -- for example, that blacks vote</p> <p>5 overwhelmingly for Democratic candidates is</p> <p>6 insufficient to establish that blacks</p> <p>7 are -- that black voting is in any sense</p> <p>8 affected by the fact that blacks are voting on</p> <p>9 something related to race and similarly that</p> <p>10 white crossover is being structured by race.</p> <p>11 So it's the insufficiency. It's not</p> <p>12 the impossibility of showing that, it's just the</p> <p>13 absolutely plain fact when you look at this</p> <p>14 table is that if you say, okay, this table</p> <p>15 clearly shows partisan polarization, absent the</p> <p>16 partisan polarization, what are we really seeing</p> <p>17 here.</p> <p>18 What the table doesn't do, what</p> <p>19 Dr. -- the entirety of Dr. Collingwood's report</p> <p>20 doesn't do is show any evidence of racially</p> <p>21 polarized voting and a repeated abundance of</p> <p>22 party polarization.</p> <p>23 Q. And your answer there is talking about the race</p> <p>24 of the candidate; is that correct?</p> <p>25 A. At this level --</p> <p style="text-align: right;">127</p>
<p>1 A. The difference may be -- it's possible that the</p> <p>2 difference is outside of the -- it's possible</p> <p>3 that we don't have overlapping credible</p> <p>4 intervals here. It wouldn't seem very likely to</p> <p>5 me, but it's possible. It wouldn't change my</p> <p>6 answer.</p> <p>7 Q. All right. So in your view, in a district where</p> <p>8 black voters show cohesive support at a level</p> <p>9 of, you know, 98 percent for particular white</p> <p>10 candidates, your view is that it is impossible</p> <p>11 to demonstrate on the basis of ecological</p> <p>12 inference that black voters are motivated by the</p> <p>13 race of the candidate?</p> <p>14 ATTORNEY McKNIGHT: Objection; form.</p> <p>15 THE WITNESS: No, I would not agree</p> <p>16 with that.</p> <p>17 BY ATTORNEY THEODORE:</p> <p>18 Q. What do you disagree with about that statement?</p> <p>19 A. I'm not saying that anything is impossible.</p> <p>20 Again, all I'm saying is that this analysis,</p> <p>21 these numbers which are Dr. Collingwood's</p> <p>22 numbers, show us that party is having a very,</p> <p>23 very large effect on how people vote, both black</p> <p>24 and white, and it doesn't show that race is</p> <p>25 having an effect on how people vote that's in</p> <p style="text-align: right;">126</p>	<p>1 ATTORNEY McKNIGHT: Objection; form.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: Again, I didn't choose</p> <p>4 this analysis form. This is just the analysis</p> <p>5 form that is the most commonly by far -- I'd say</p> <p>6 99 percent of all the analysis on Gingles 2 and</p> <p>7 3 is based on exactly this kind of analysis,</p> <p>8 both mine and Dr. Collingwood's and everybody</p> <p>9 else's.</p> <p>10 This is an analysis that's provided,</p> <p>11 and in this analysis, once you add in -- which</p> <p>12 Dr. Collingwood did not do -- the party of the</p> <p>13 candidates, and once you add in -- which</p> <p>14 Dr. Collingwood did not do -- the race of the</p> <p>15 candidates, it's possible just by looking at</p> <p>16 what he's produced to tell easily, with no</p> <p>17 statistical expertise at all, what on the face</p> <p>18 the table actually shows.</p> <p>19 It's obscured in his report because you</p> <p>20 can't look at the table and tell whether this is</p> <p>21 party voting or whether the voting in anyway</p> <p>22 implicates race.</p> <p>23 Once you put those -- that information</p> <p>24 back in, it tells you that the table is entirely</p> <p>25 compatible with the party of the candidates, not</p> <p style="text-align: right;">128</p>

<p>1 with the race of the candidate. That doesn't</p> <p>2 prove the negative. It doesn't exclude the</p> <p>3 possibility of something else happening. It</p> <p>4 just excludes the ability of his analysis to any</p> <p>5 way establish that there's empirical data here</p> <p>6 to support the position that voting is racially</p> <p>7 polarized in North Carolina.</p> <p>8 BY ATTORNEY THEODORE:</p> <p>9 Q. And by voting is racially polarized in</p> <p>10 North Carolina, you mean that voting is racially</p> <p>11 polarized in North Carolina on the basis of the</p> <p>12 race of the candidate, correct?</p> <p>13 ATTORNEY McKNIGHT: Objection; form.</p> <p>14 THE WITNESS: Yes. I'm saying that --</p> <p>15 I use the term racially polarized voting more</p> <p>16 carefully than most people do. It's a</p> <p>17 pejorative thing to say about voters. It's an</p> <p>18 unfortunate things to say about voters. It's an</p> <p>19 unfortunate place to be as a society, and so</p> <p>20 what this table shows is that black and white</p> <p>21 voters, like voters in general, are highly</p> <p>22 polarized with regard to how they cast their</p> <p>23 vote based on the party of candidates.</p> <p>24 It does not show anything beyond that.</p> <p>25 It certainly doesn't show -- or it certainly</p> <p style="text-align: right;">129</p>	<p>1 policy representation, not necessarily. I think</p> <p>2 that's more to my point than yours.</p> <p>3 All right. If what we're talking about</p> <p>4 is what matters is not the race of the candidate</p> <p>5 but the policy positions of candidates, then</p> <p>6 we're talking about democratic politics. People</p> <p>7 vote for candidates that represent their policy</p> <p>8 interests. That's not racially polarized</p> <p>9 voting. That's policy polarized voting.</p> <p>10 BY ATTORNEY THEODORE:</p> <p>11 Q. Let me just repeat the question.</p> <p>12 Do you believe that a black candidate</p> <p>13 necessarily will advance the goals or interests</p> <p>14 of black voters better than a white candidate</p> <p>15 would?</p> <p>16 ATTORNEY McKNIGHT: Same objection;</p> <p>17 form.</p> <p>18 THE WITNESS: No, I do not.</p> <p>19 BY ATTORNEY THEODORE:</p> <p>20 Q. Let's turn to Table 4 on page 12 of your report.</p> <p>21 So this is the table reflecting RPV</p> <p>22 estimates from Dr. Collingwood's report from the</p> <p>23 2016 statewide races in the four regions,</p> <p>24 correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">131</p>
<p>1 isn't proper to characterize that as a situation</p> <p>2 in which white voters are voting for -- are</p> <p>3 voting on the basis of race or black voters are</p> <p>4 voting on the basis of race. This is not about</p> <p>5 black candidates favoring -- or black voters</p> <p>6 favoring black candidates over white or white</p> <p>7 voters favoring white candidates over black.</p> <p>8 That's an implication you can draw from the</p> <p>9 table, but it is not in fact what the table</p> <p>10 shows.</p> <p>11 BY ATTORNEY THEODORE:</p> <p>12 Q. Do you believe that a black candidate</p> <p>13 necessarily will advance the goals or interests</p> <p>14 of black voters better than a white candidate</p> <p>15 would?</p> <p>16 ATTORNEY McKNIGHT: Objection; form.</p> <p>17 THE WITNESS: That's a very broad</p> <p>18 question. There are multiple forms of</p> <p>19 representation, so in theory, representation --</p> <p>20 one kind of representation is called reflective</p> <p>21 representation. So am I better represented as a</p> <p>22 resident of Houston by having a fellow resident</p> <p>23 of Houston. I am better represented in the</p> <p>24 sense of reflective representation. Does it</p> <p>25 mean they will do a better job of providing</p> <p style="text-align: right;">130</p>	<p>1 Q. And you've added the race of the candidate,</p> <p>2 correct?</p> <p>3 A. That is correct.</p> <p>4 Q. All right.</p> <p>5 A. And the party.</p> <p>6 Q. And the party. Thank you.</p> <p>7 If you go to the row for black versus</p> <p>8 white Democratic average, do you see that row?</p> <p>9 A. Black versus white, Democratic average, okay.</p> <p>10 Q. And all the black candidates who ran in the 2016</p> <p>11 elections or in the 2016 partisan elections were</p> <p>12 Democrats, and all the white candidates who ran</p> <p>13 in the 2016 -- I'm sorry. Let me start again.</p> <p>14 All the black candidates who ran in the</p> <p>15 2016 partisan elections were Democrats and none</p> <p>16 of the black candidates were Republicans; is</p> <p>17 that correct?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. And that row in Table 4, the black versus</p> <p>20 white Democratic average row, reflects that in</p> <p>21 contests between black and white candidates,</p> <p>22 black voters gave 99 percent of their vote to</p> <p>23 the black candidate in the demonstration area</p> <p>24 and in enacted Districts 1 and 2; is that</p> <p>25 correct?</p> <p style="text-align: right;">132</p>

<p>1 A. That is correct.</p> <p>2 Q. And by contrast, white voters gave between 77</p> <p>3 and 82 percent of their vote to the white</p> <p>4 candidate in those 2016 election; is that</p> <p>5 correct?</p> <p>6 A. That is correct.</p> <p>7 Q. All right. Let's go to Table 5, page 13.</p> <p>8 And this is the same table but for</p> <p>9 2018, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. And here there's only one race involving a black</p> <p>12 candidate, correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And Table 5 reflects that in the one contest</p> <p>15 between black and white candidates, black voters</p> <p>16 gave between 98 and 99 percent of their vote to</p> <p>17 the black candidate in the demonstration area</p> <p>18 and enacted Districts 1 and 2, correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And there are two white candidates in that one</p> <p>21 election between black and white candidates, and</p> <p>22 you've combined them in the row; is that right?</p> <p>23 A. That is correct.</p> <p>24 Q. And in that election between black and white</p> <p>25 candidates, white voters gave between 75 and</p> <p style="text-align: right;">133</p>	<p>1 three elections; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. All right. Let's go to Table 7, page 15.</p> <p>4 And this is the same table but for 2022</p> <p>5 races?</p> <p>6 A. That is correct.</p> <p>7 Q. And there are three races in 2022 pitting a</p> <p>8 black candidate against a white candidate; is</p> <p>9 that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And Table 7 reflects that in contests between</p> <p>12 black and white candidates in 2022, black voters</p> <p>13 give between 94 and 99 percent of their vote to</p> <p>14 the black candidate in the demonstration area</p> <p>15 District 1 and District 2?</p> <p>16 A. Yes, that is correct.</p> <p>17 Q. And in comparison, in the three contests between</p> <p>18 a black and white candidate in 2022, white</p> <p>19 voters gave between 77 and 85 percent of their</p> <p>20 vote to the white candidates; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. All right. So across all four years, it is</p> <p>23 empirically true that in contests pitting black</p> <p>24 candidates against white candidates, white</p> <p>25 voters overwhelmingly prefer the white candidate</p> <p style="text-align: right;">135</p>
<p>1 83 percent of their vote to the white candidates</p> <p>2 in the demonstration area in Districts 1 and 2?</p> <p>3 A. That is correct.</p> <p>4 Q. All right. Let's go to Table 6, page 14.</p> <p>5 This is the same table but for the 2020</p> <p>6 races; is that right?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. And here there are -- here there are</p> <p>9 three races pitting a black candidate against a</p> <p>10 white candidate; is that right?</p> <p>11 A. I'm sorry. Three, you're correct.</p> <p>12 Q. And you have the Gore-Cabbage race in the black</p> <p>13 versus white category, but that's an error in</p> <p>14 the table; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. Because both Gore and Cabbage are black?</p> <p>17 A. That's correct.</p> <p>18 Q. So Table 6 reflects that in the three contests</p> <p>19 between black and white candidates, black voters</p> <p>20 give between 98 and 99 percent of their vote to</p> <p>21 the black candidate in the demonstration area in</p> <p>22 enacted Districts 1 and 2; is that correct?</p> <p>23 A. That is correct.</p> <p>24 Q. And white voters gave between 80 and 86 percent</p> <p>25 of their vote to the white candidates in those</p> <p style="text-align: right;">134</p>	<p>1 and black candidates [sic] overwhelmingly prefer</p> <p>2 the black candidate. Is that true?</p> <p>3 ATTORNEY McKNIGHT: Objection; form.</p> <p>4 THE WITNESS: Yeah, I think that's</p> <p>5 true.</p> <p>6 BY ATTORNEY THEODORE:</p> <p>7 Q. Okay. All right. I'm going to refer to a</p> <p>8 statewide contest between a white candidate and</p> <p>9 a black candidate as a biracial race. Is that</p> <p>10 fair?</p> <p>11 A. Yes.</p> <p>12 Q. And would you agree that in every single</p> <p>13 biracial statewide contest in 2018, 2020, and</p> <p>14 2022, white voters voted cohesively against the</p> <p>15 black candidate?</p> <p>16 ATTORNEY McKNIGHT: Objection; form.</p> <p>17 THE WITNESS: No.</p> <p>18 BY ATTORNEY THEODORE:</p> <p>19 Q. Why do you disagree with that statement?</p> <p>20 A. At a 2016 Supreme Court race, white voters not</p> <p>21 voting cohesively in opposition to the black</p> <p>22 candidate.</p> <p>23 Q. Let me ask the question again.</p> <p>24 You'd agree that in every single</p> <p>25 biracial statewide contest in 2018, 2020, and</p> <p style="text-align: right;">136</p>



1 2022, white voters voted as a bloc against the  
 2 black candidate; is that correct?  
 3 ATTORNEY McKNIGHT: Objection; form.  
 4 THE WITNESS: Again, I don't want to  
 5 quibble about vote as a bloc, but --  
 6 BY ATTORNEY THEODORE:  
 7 Q. I'm sorry. Let me just interrupt you.  
 8 I'm excluding 2016 from my question.  
 9 A. Okay. In 2018, 2020, and 2022, all of the  
 10 elections show white voters voting at 70 to 80  
 11 some percent for the white candidate.  
 12 Q. All right. So let me just repeat it again.  
 13 You'd agree that in every single  
 14 biracial statewide contest in 2018, 2020, and  
 15 2022, white voters voted cohesively against the  
 16 black candidate?  
 17 ATTORNEY McKNIGHT: Objection; form.  
 18 THE WITNESS: Again, with some level  
 19 of -- some level of cohesion, yes, I agree.  
 20 BY ATTORNEY THEODORE:  
 21 Q. Well, not just at some level of cohesion, but at  
 22 the 75 percent level of cohesion that we talked  
 23 about earlier. Is that true?  
 24 A. Essentially, yes.  
 25 Q. Okay. And that's true across the demonstration

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1 area, District 1 and District 2, correct?  
 2 A. That's correct.  
 3 Q. All right. And of the six biracial statewide  
 4 contests in 2016, white voters voted cohesively  
 5 against the black candidate in at least five of  
 6 the six; is that correct?  
 7 A. Yes. At that 75 percent level, yes, that would  
 8 be correct.  
 9 Q. Okay. Let's turn to page 11 of your report.  
 10 You state there:  
 11 "The 2016 contests are the only  
 12 ones that show any consistent tendency  
 13 for white voters to crossover at lower  
 14 levels for black Democratic candidates."  
 15 Did I read that correctly?  
 16 A. Yes.  
 17 Q. So you agree in 2016, at least, there is a  
 18 consistent tendency for white voters to cross  
 19 over at lower levels for black Democratic  
 20 candidates?  
 21 A. Again, I stand by what I said there. It is  
 22 consistent, that is, it occurs across each of  
 23 the areas of analysis, but again, the magnitude  
 24 is very slight. And what exactly that means, I  
 25 don't know, but it is at least consistent.

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1 Q. Okay. And turning to 2018, which is on page 13  
 2 of your report -- all right. Skip that,  
 3 actually. Sorry.  
 4 Turn to 2020 which is on page 14 of  
 5 your report.  
 6 A. Yes.  
 7 Q. White voters are slightly more likely to vote  
 8 for the white Democrat than the black Democrat;  
 9 is that right?  
 10 A. Not consistently, no.  
 11 Q. On average, in District 2, white voters are  
 12 slightly more likely to vote for the white  
 13 Democrat than the black Democrat in 2020; is  
 14 that correct?  
 15 A. I guess I want you to point me to what -- what  
 16 numbers we're talking about here that you say  
 17 reflect that.  
 18 Q. It's the number -- the average in the white  
 19 versus white Democratic average row for white  
 20 voters in District 2. You see that 17 percent?  
 21 A. 17 percent, yes.  
 22 Q. And the black versus white row, Democratic  
 23 average in District 2 for white voters is  
 24 16 percent. Do you see that?  
 25 A. Yes.

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1 Q. Okay. So in 2020, white voters are slightly  
 2 more likely in District 2 to vote for the white  
 3 Democrat than the black Democrat?  
 4 A. Again, the point estimate is one percentage  
 5 point difference. I don't know that I can say  
 6 that the voters themselves are consistently or  
 7 more likely to -- I can't say what that means  
 8 about the behavior of the voters. It's too  
 9 small a difference for this technique to tell us  
 10 if there's actually a difference in what the  
 11 voters are doing in terms of how they're casting  
 12 their vote. There are other factors that could  
 13 be leading to that very light difference beyond  
 14 the voting behavior of the voters.  
 15 It's -- that difference is not  
 16 consistent across the table. There's no  
 17 difference in District 1. There's no difference  
 18 in the demonstration area. There's essentially  
 19 no difference in the statewide. So, yeah, if  
 20 that's -- taking them together, the table shows  
 21 that maybe there's a one percentage point  
 22 difference in the behavior in District 2 and  
 23 maybe that means something real or maybe it  
 24 doesn't, but that's the best you can do.  
 25 Q. Okay. And I'm going to ask you a similar

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<p>1 question about Table 7 on page 15.</p> <p>2 In 2022, white voters are slightly more</p> <p>3 likely in the demonstration area to vote for the</p> <p>4 white Democrat than the black Democrat; is that</p> <p>5 correct?</p> <p>6 A. Let me make sure I'm looking at the right</p> <p>7 numbers here.</p> <p>8 Q. I'm looking at the 12 percent versus 11 percent.</p> <p>9 A. Yes, 12 percent versus 11 percent.</p> <p>10 I'm sorry. Where is the -- back here.</p> <p>11 Demonstration area, 12 versus 11, yes.</p> <p>12 Q. Okay. So in 2022, white voters are slightly</p> <p>13 more likely in the demonstration area to vote</p> <p>14 for the white Democrat than the black Democrat?</p> <p>15 A. Again, with the same caveat that we're now</p> <p>16 talking about what voters do rather than what</p> <p>17 the numbers are. The numbers are what they are.</p> <p>18 I don't think they tell us that about the</p> <p>19 voters.</p> <p>20 And I don't think -- I don't think the</p> <p>21 statewide -- it's the case that we know that</p> <p>22 white voters are more likely to vote for black</p> <p>23 candidates than white candidates despite the</p> <p>24 fact that there's a one point increase when we</p> <p>25 move to the black candidates. I don't think the</p> <p style="text-align: right;">141</p>	<p>1 than a black Democrat?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So every time there is a difference in</p> <p>4 the averages you are reporting in these tables</p> <p>5 in the demonstration area District 1 and</p> <p>6 District 2, it is a difference in the direction</p> <p>7 of white voters preferring the white Democrat</p> <p>8 over the black Democrat; is that correct?</p> <p>9 A. That's the direction of the point estimate.</p> <p>10 Again, we don't know whether these differences</p> <p>11 reflect any real difference in the behavior of</p> <p>12 white voters or not.</p> <p>13 Q. But just looking at the numbers you report in</p> <p>14 your table, every time there is a difference in</p> <p>15 the averages in the table for our demonstration</p> <p>16 area for District 1 or for District 2, it's a</p> <p>17 difference in the direction of white voters</p> <p>18 preferring the white Democrat over the black</p> <p>19 Democrat.</p> <p>20 ATTORNEY McKNIGHT: Objection; form.</p> <p>21 THE WITNESS: The difference in the</p> <p>22 numbers, yes.</p> <p>23 BY ATTORNEY THEODORE:</p> <p>24 Q. You said earlier that the independent variable</p> <p>25 in the EI analysis and Dr. Collingwood's EI</p> <p style="text-align: right;">143</p>
<p>1 voters are less likely when we move between 12</p> <p>2 and 11.</p> <p>3 Q. Okay. Do you agree that a 1 percent difference</p> <p>4 in white voter support could make the difference</p> <p>5 for black candidate success in a particular</p> <p>6 election?</p> <p>7 A. Actual -- the actual difference in voting of</p> <p>8 1 percent, yes.</p> <p>9 Q. Did you identify any year or region -- strike</p> <p>10 that.</p> <p>11 For any year in the demonstration area</p> <p>12 of District 1 or District 2, did you identify</p> <p>13 any example in which white voters were less</p> <p>14 likely to vote for a white Democrat than a black</p> <p>15 Democrat?</p> <p>16 A. So we're confining it to a demonstration area</p> <p>17 only?</p> <p>18 Q. We're confining it to the demonstration area</p> <p>19 District 1 and District 2. We're excluding the</p> <p>20 statewide.</p> <p>21 A. I think that's correct.</p> <p>22 Q. In other words, it's correct that you did not</p> <p>23 identify any example in the demonstration area</p> <p>24 District 1 or District 2 in which white voters</p> <p>25 were less likely to vote for a white Democrat</p> <p style="text-align: right;">142</p>	<p>1 analysis was the race of the voter; is that</p> <p>2 correct?</p> <p>3 A. Basically, yes.</p> <p>4 Q. Okay. Was the race of the candidate an</p> <p>5 independent variable that was included in your</p> <p>6 EI analysis?</p> <p>7 A. No, it's not.</p> <p>8 Q. And it's not included in Dr. Collingwood's</p> <p>9 analysis either, right?</p> <p>10 A. That's correct.</p> <p>11 Q. Was the party of the candidate an independent</p> <p>12 variable that was included in your EI analysis</p> <p>13 or Dr. Collingwood's EI analysis?</p> <p>14 A. It was not.</p> <p>15 Q. And would you agree that you can't draw</p> <p>16 conclusions about the causal effect of the</p> <p>17 candidates's party or race if it was not an</p> <p>18 independent variable in the EI analysis?</p> <p>19 A. No, I would not agree with that. I don't think</p> <p>20 you can draw a causal inference from the EI</p> <p>21 analysis, period.</p> <p>22 So broadly, yes, but if your question</p> <p>23 is -- if you're framing the question to suggest</p> <p>24 that if that was in the EI analysis, we would be</p> <p>25 able to draw a causal conclusion and we can't.</p> <p style="text-align: right;">144</p>

<p>1 So you can't draw causal conclusions, but it's 2 not because about whether a variable is or isn't 3 in the EI model. It's about whether this 4 analysis is capable of drawing -- can draw a 5 causal conclusion about the variables that are 6 in the EI analysis.</p> <p>7 It doesn't produce -- Dr. Collingwood's 8 analysis does not show the causal -- does not 9 demonstrate a causal connection between the race 10 of the candidate and the vote. Or I'm sorry -- 11 between the race and the voters and the vote. 12 It's suggestive of it or compatible with it, but 13 we're not doing a causal analysis here. We're 14 doing an ecological inference on ecological 15 data.</p> <p>16 Q. All right. Let me frame it slightly 17 differently.</p> <p>18 Would you agree with Dr. Collingwood's 19 analysis because the race of the voter is the 20 independent variable, the EI analysis shows that 21 the polarized voting results can be explained by 22 the race of the voter. Would you agree with 23 that statement?</p> <p>24 A. So, yes, you can use the race of the voters to 25 predict party voting because apparently to</p> <p style="text-align: right;">145</p>	<p>1 almost completely explained here and the 2 difference with regard to the race of candidates 3 is almost completely unexplained by the race of 4 the voters. I don't know how much clearer I can 5 make that.</p> <p>6 All this analysis shows is that black 7 and white voters in North Carolina show 8 different levels of support for Democratic and 9 Republican candidates, full stop.</p> <p>10 Q. All right. You're not contending that the 11 partisanship or party affiliation of the voter 12 rather than the race of the voter is what 13 explains or causes polarized voting results that 14 we see here; is that correct?</p> <p>15 A. Half correct.</p> <p>16 Q. All right. Which half?</p> <p>17 A. We have no measure of the partisan affiliation 18 of the voters, so we're not analyzing the party 19 affiliation of the voters.</p> <p>20 Q. Okay.</p> <p>21 A. We're analyzing the race, and the race of the 22 voter is strongly connected to the party they 23 vote for, not strongly connected to the racial 24 characteristics of the candidates they vote for. 25 So again, what we demonstrated here is</p> <p style="text-align: right;">147</p>
<p>1 the -- we haven't delved into what that means, 2 whether it's party ID or policy or something 3 else, but apparently there is a connection 4 between the race of the voter and their party. 5 That's what the analysis show.</p> <p>6 I don't know if it's a causal 7 connection because this isn't a causal analysis, 8 but what the conclusion you can draw, the 9 reliable conclusion you can draw from this 10 analysis is that there's a connection between 11 the independent variable, the race of the voter, 12 and the dependent variable which is whether they 13 vote Democrat or Republican in a partisan 14 election by connections established here.</p> <p>15 Q. So you're not offering any opinion that the 16 polarized voting results that we see can't be 17 explained by the race of the voter; is that 18 right?</p> <p>19 A. Again, the party -- the difference in party 20 support can be explained by the race of the 21 voters. The difference in the support for black 22 and white candidates cannot be explained by the 23 race of the voters. That just seems like a 24 pretty simple fact pattern to me.</p> <p>25 The difference in party voting just</p> <p style="text-align: right;">146</p>	<p>1 that the race of voters is strongly connected to 2 the party of candidates. Why that's the case 3 hasn't been demonstrated here or analyzed here 4 by Dr. Collingwood or by me.</p> <p>5 Q. Okay.</p> <p>6 A. This is about what isn't demonstrated.</p> <p>7 Q. So you've done no analysis of the question of 8 whether a voter's party affiliation or 9 partisanship accounts for the EI results that we 10 see?</p> <p>11 A. There's been no analysis presented here that 12 looks at the partisanship of voters by either 13 Dr. Collingwood or myself. It is certainly the 14 case, given these results, that one might 15 suspect this had something to do with what has 16 over the last 50 years been demonstrated without 17 exception to be the most powerful effect on 18 voting -- the single most powerful effect on 19 voting in the United States in partisan 20 elections, and that is the partisan leanings of 21 the voters.</p> <p>22 Now, maybe that's an exception in 23 North Carolina, but you would have to bring some 24 pretty strong evidence to convince me that 25 voters in North Carolina are not voting on the</p> <p style="text-align: right;">148</p>

<p>1 basis of their partisan affiliation. Every poll  2 I've ever seen for North Carolina or any other  3 state in the country shows that voters  4 overwhelmingly vote on the basis of  5 partisanship.  6 I don't have data for this analysis.  7 Dr. Collingwood didn't seem to think it was  8 important. I would agree. I don't think we  9 need analysis to establish the fact that there  10 is heavy partisan polarization in North Carolina  11 and everywhere else in the United States today.  12 Q. All right. Do you agree that candidates who are  13 Democrats may be more likely to hold particular  14 policy views that black voters support or that  15 black voters believe will advance the interests  16 of black people?  17 ATTORNEY McKNIGHT: Objection; form.  18 THE WITNESS: I prefer to stick to what  19 is in the analysis, and there's no analysis here  20 from Dr. Collingwood and no response from me  21 about whether this is policy representation or  22 party representation. My point is just that  23 if -- if this is about differences in policy,  24 then -- and again, differences in policy are not  25 what's protected by the Voting Rights Act.</p> <p style="text-align: right;">149</p>	<p>1 THE WITNESS: I want to make it clear,  2 I'm not suggesting that either black or white  3 voters are blindly following parties -- party  4 sentiment, although they have strong party  5 sentiment from all the research I've seen. They  6 may also have very substantial policy reasons  7 for supporting one party over the other, and  8 that distinction between partisan forces and  9 policy forces is sometimes made, but I don't  10 think that it's a distinction that's meaningful  11 given that the same sort of analysis is applied  12 to nonpartisan elections, and there obviously  13 it's not necessarily partisanship but might in  14 fact be entirely policy differences, and the  15 court discusses exactly that. If these are just  16 policy differences, then this is not a violation  17 of the Voting Rights Act.  18 BY ATTORNEY THEODORE:  19 Q. All right. Other than simply observing that the  20 black preferred candidates are consistently  21 Democrats, you haven't done any work in this  22 report or for this case to try to assess why the  23 black preferred candidates are consistently  24 Democrats; is that correct?  25 A. Yes. All I'm commenting on here is what it is</p> <p style="text-align: right;">151</p>
<p>1 BY ATTORNEY THEODORE:  2 Q. All right. But do you agree that candidates who  3 are Democrats may be more likely to hold  4 particular policy views that black voters  5 believe will advance the interest of black  6 people?  7 ATTORNEY McKNIGHT: Objection; form.  8 THE WITNESS: In that form, I agree,  9 they may be. We haven't seen that. We have no  10 evidence for that. I'm not presenting it,  11 Dr. Collingwood isn't, but that may be. But  12 you're right, it may be.  13 BY ATTORNEY THEODORE:  14 Q. So, for example, a Democratic candidate may be  15 more likely to focus when campaigning on  16 combatting mortgage discrimination or redlining,  17 for example?  18 A. Maybe.  19 Q. Maybe more likely to support the Black Lives  20 Matter movement?  21 A. Maybe.  22 Q. Fair to say there are other issues of particular  23 salience to black voters that a Democratic  24 candidate may be more likely to focus on?  25 ATTORNEY McKNIGHT: Objection; form.</p> <p style="text-align: right;">150</p>	<p>1 that Dr. Collingwood's analysis has  2 demonstrated. I'm not trying to take that apart  3 or try to understand anything deeper about it  4 except to say that the analysis he presented  5 makes it very clear that these voting  6 differences are at least as related to the party  7 affiliation of the candidates, not the race of  8 the candidates.  9 Q. Okay. And you haven't done any work to try to  10 assess whether black voters consistently support  11 Democratic candidates because they're Democrats  12 or whether they consistently support Democratic  13 candidates because Democratic candidates  14 consistently promote policies and values shared  15 by black voters; is that correct?  16 A. There's no analysis here on that issue in my  17 report or Dr. Collingwood's.  18 Q. You haven't done any analysis of that issue?  19 A. For this case, no.  20 Q. All right. Did you investigate any common  21 characteristics other than party and race shared  22 by any candidate discussed in your report?  23 A. No.  24 Q. All right. You agree that candidates who are  25 Republicans may be less likely to hold policy</p> <p style="text-align: right;">152</p>

<p>1 views that back voters believe will advance 2 their interests? 3 ATTORNEY McKNIGHT: Objection; form. 4 THE WITNESS: They may be. 5 BY ATTORNEY THEODORE: 6 Q. Well, in fact, Dr. Alford, you know, you teach 7 classes about American politics. Don't you know 8 that Democratic candidates are more likely than 9 Republican candidates to support the Black Lives 10 Matter movement, for example? 11 A. Black Lives Matter, yes, I would say that's 12 probably an issue where that would be fair to 13 say that, produced fairly substantial initial 14 split. I'd say that split has declined 15 somewhat, but, yeah, I think that would be fair. 16 Q. All right. And it's fair to say that you know 17 that there are other issues of particular 18 salience to black voters that a Democratic 19 candidate is more likely to focus on? 20 A. I mean, it's possible. I know that -- for 21 example, that black voters are less likely to 22 support abortion than white voters, and despite 23 their positions in the Republican and Democratic 24 Party, that doesn't appear to have affected 25 the -- at least to date affected the tendency of</p> <p style="text-align: right;">153</p>	<p>1 was a Democrat, and so I had a choice to make, 2 that's the direction I went. 3 I think that's true of voters in 4 general. And again, I don't think that -- I 5 think that's just part of, you know, Democratic 6 politics. You know, if I -- I happen to live in 7 a Republican district so I'm represented by a 8 Republican member of congress, to the extent 9 that's representation. I can move to another 10 part of Houston and I'd be represented by a 11 Democratic member of congress. So my district 12 could be one in which I would elect someone who 13 would represent my interest or not, and that 14 reflects the fact that if you live in a 15 Republican district, you're likely to have a 16 Republican representative and vice versa. 17 BY ATTORNEY THEODORE: 18 Q. What are some other examples that you can think 19 of other than the Black Lives Matter movement 20 where Democratic candidates are more likely to 21 support policies that black voters also support? 22 A. I'd say I haven't actually looked at that 23 issue -- particularly looked at it in 24 North Carolina which is not a place I've ever 25 lived or studied. So off the top of my head, I</p> <p style="text-align: right;">155</p>
<p>1 black voters to vote Democratic. 2 Q. All right. But there are other issues, you 3 would agree, of particular salience to black 4 voters where a Democratic candidate is going to 5 be more likely to share the view of black voters 6 than the Republican candidate. Is that true? 7 ATTORNEY McKNIGHT: Objection; form. 8 THE WITNESS: Again, we're -- because 9 we have two major parties, were on a party 10 system, there are things that people share and 11 don't share, certainly there are a lot of 12 issues, gay marriage, transgender rights, 13 abortion rights, where black voters are not 14 particularly in harmony with the Democratic 15 Party, there are other issues where they may be 16 more in harmony with the party. 17 So, yeah, there -- there is 18 partisanship here and there are policy issues 19 here that voters used in deciding where they 20 belong in this political spectrum, and 21 that's -- that's true of black voters as it is 22 of white voters. I'm a Democrat because -- 23 partly because -- in my case fairly specifically 24 because I support policies of the Democratic 25 Party. My father was a Republican, my mother</p> <p style="text-align: right;">154</p>	<p>1 don't know what that profile would look like. 2 Q. Okay. You would agree that it is possible for 3 political affiliation to be motivated by race, 4 correct? 5 A. Yes. 6 Q. Let's turn to Table 14 of your report, page 6. 7 I'm sorry. I think I mean Table 6 of your 8 report, page 14. 9 A. I was getting confused. Much better. 10 Q. Okay. One of the biracial contests here is the 11 2020 race between Cheri Beasley and Paul Newby 12 for State Supreme Court, correct? 13 A. Yes. 14 Q. All right. And white voters gave -- white 15 voters cohesively gave 86 percent to Justice 16 Newby in the demonstration area, correct? 17 A. Correct. 18 Q. And they gave only 14 percent of their support 19 to Cheri Beasley, correct? 20 A. Correct. 21 Q. Okay. And, you know, we've covered some of this 22 ground, I think, but nothing in your analysis 23 here purports to identify the reason that white 24 voters supported Justice Newby; is that correct? 25 A. I'm not exactly sure. So we're off the issue of</p> <p style="text-align: right;">156</p>

<p>1 causation, and I'm happy about that, but when we 2 take a single election and look at it and we say 3 why would Paul Newby be getting 86 percent of 4 the white vote and then we look at all of the 5 other tables, I don't think that's a difficult 6 question to answer. He's getting something 7 around 80 percent of the vote which would put 8 him in precisely the same position as every 9 other Republican in the 49 elections.</p> <p>10 So, yes, the table -- the analysis does 11 provide a very simple explanation for why Paul 12 Newby might be getting 86 percent of the vote 13 because he's a Republican and every other 14 Republican is getting 86 percent of the vote in 15 essence. So if you just treat that why is he 16 getting strong support from Republicans, it's 17 not because he's white, clearly, because we can 18 see lots of other white candidates here who are 19 getting exactly the opposite; they're getting 20 18 percent.</p> <p>21 I mean, maybe just that the tables show 22 something so strongly that it almost disappears, 23 but if you looked at these tables and I changed 24 the terms from race and party and told you this 25 had to do with ice cream or something, you would</p> <p style="text-align: right;">157</p>	<p>1 here, but the fact that there is virtually no 2 variation across elections, across time, across 3 place, across office, that all of these show 4 almost identical patterns with no explanatory 5 variable except the party of the candidates 6 strongly suggest unless there is some other 7 characteristic that is universally true of the 8 Republican candidates, universally true at the 9 same level of the Democratic candidates, and if 10 so, it would be interesting to know what that 11 is, but it's not my job to figure out what it 12 is. My job is to tell you what Dr. Collingwood 13 has demonstrated. He's demonstrated that 14 Democratic and Republican candidates get highly 15 similar, highly consistent levels of support 16 from black and white voters, period.</p> <p>17 And one thing we know from this table 18 is that the characteristic we're most interested 19 in here which is the role of race in this voting 20 is included in this table, and it does not make 21 a difference. So maybe there's a difference in 22 hair style or maybe there's a difference in 23 policy positions, although policy positions vary 24 wildly among Democrats and Republicans these 25 days, but one thing we know is it is not the</p> <p style="text-align: right;">159</p>
<p>1 look at the tables and there's no question what 2 the conclusions you should reach. There's a 3 dependable force operating here, and that force 4 is party of the candidate on the vote of black 5 and white voters in North Carolina.</p> <p>6 Q. All right. But you're -- and unfortunately, 7 we're not yet off the topic of causation.</p> <p>8 Okay. I think we've covered this, but 9 the only characteristics for candidates 10 reflected on this table are their race and their 11 party, correct?</p> <p>12 A. Yes, which is two more things that are reflected 13 than Dr. Collingwood's table.</p> <p>14 Q. There are no other characteristics of the 15 candidates that are reflected here?</p> <p>16 A. That's correct.</p> <p>17 Q. Do you believe that you can testify to a 18 reasonable degree of scientific certainty that 19 the pattern of racially polarized voting here is 20 caused by the party affiliation of the 21 candidates rather than some other characteristic 22 of the candidate that makes the candidate 23 relatively more attractive to black voters or to 24 white voters?</p> <p>25 A. So again, we don't have any causal analysis</p> <p style="text-align: right;">158</p>	<p>1 difference in the race of the candidates. That 2 does not make this -- that does not produce this 3 difference, it does not alter this basic 4 pattern.</p> <p>5 So if you put those in a competition 6 with each other, there isn't any issue that for 7 whatever reason the race variable does not tell 8 us what is happening when we talk about the 9 characteristics of a candidate. The party of 10 the candidate is very important. The race of 11 the candidate is not.</p> <p>12 Q. You did not consider any other potential 13 explanatory characteristics of the candidate 14 besides party and race, correct?</p> <p>15 A. Again, I'm considering two characteristics that 16 are available for candidates unambiguously that 17 are not considered by Dr. Collingwood, although 18 they drive his results and that are critical to 19 understanding of what the table shows and what 20 the case is about.</p> <p>21 And if there are other policy or 22 candidate characteristics driving this that are 23 not race, then I am not showing what their 24 influence is and it in no way alters my view of 25 what this means in terms of carrying the</p> <p style="text-align: right;">160</p>



<p>1 plaintiffs' burden in a Section 2 Voting Rights 2 Act case.</p> <p>3 I guess another way to put it is what 4 variance are you trying to get me to explain? 5 The variance in 97, 98, and 99 percent black 6 support, all of the characteristics of the 7 candidates that could be causing difference are 8 not causing more than a 3 percentage point 9 difference in the black vote, from nearly 10 unanimous to unanimous. So I don't know what 11 all those characteristics are, but that's not 12 going to give you much explanatory power here.</p> <p>13 Q. Would it be possible to design a regression to 14 try to isolate whether white voters would be 15 less likely to vote for a particular candidate 16 if that candidate held particular policy views 17 even while holding party affiliation constant?</p> <p>18 A. Again, whatever difference that is making in the 19 aggregate, there's very little difference in the 20 behavior of either black or white voters to 21 explain here. Whatever it is, it's not -- it's 22 not breaking in a way that is consistent with 23 race because that would produce big racial 24 differences here, and we're not seeing them.</p> <p>25 I don't know if, first of all,</p> <p style="text-align: right;">161</p>	<p>1 Isn't it possible that if you had 2 considered other potential explanatory factors 3 for the difference in white and black voting, 4 those other potential explanatory factors would 5 be just as explanatory as the party affiliation 6 of the candidate?</p> <p>7 ATTORNEY McKNIGHT: Objection; form.</p> <p>8 THE WITNESS: I don't know whether it's 9 possible or not. These are fairly extreme 10 results. Maybe it's possible. Again, whatever 11 those characteristics are, if they're related to 12 policy differences or geographic differences, it 13 doesn't change my position at all. It just 14 happens that we have a clear ability to look at 15 a party difference here.</p> <p>16 So I'm not in any sense -- I don't 17 believe in any sense that this is somehow 18 magically either partisanship or race. Those 19 are two things that we have a measure of. 20 Partisanship is very important. Maybe that's 21 the result of all kinds of other factors that 22 are not race.</p> <p>23 But again, my job is to address the 24 adequacy of Dr. Collingwood's empirical analysis 25 so that the court has a solid, empirical basis</p> <p style="text-align: right;">163</p>
<p>1 regression is the only technique, but if it's 2 possible to devise that kind of analysis, 3 then -- again, I'm not sure what variation 4 you're trying to explain, but if you want to 5 explain -- you might be able to account for some 6 very modest difference, but none of these 7 results -- in none of these cases are you trying 8 to sort of push this into a different range.</p> <p>9 You don't have results here that are, you know, 10 showing differences in either preferred 11 candidate or particularly strong differences in 12 the level of support in either black or white 13 voters.</p> <p>14 So I'm not sure exactly what variance 15 you'd be explaining there. I haven't done that 16 analysis, Dr. Collingwood hasn't done it, and 17 again, if those characteristics are independent 18 of the characteristic of race, which is a 19 characteristic we do have here for both voters 20 and candidates, then again it just falls into 21 that -- all those characteristics that motivate 22 Democratic elections and cause some people to 23 win and some people to lose.</p> <p>24 Q. So I want you to put aside the question of 25 variance in results for a moment.</p> <p style="text-align: right;">162</p>	<p>1 for concluding that voting is polarized on the 2 basis of race and that data which is all that I 3 have in my report is not sufficient to establish 4 anything close to that.</p> <p>5 BY ATTORNEY THEODORE:</p> <p>6 Q. All right. Dr. Alford, are you aware that 7 Democratic Party platforms have endorsed the 8 Black Lives Matter movement in the past?</p> <p>9 ATTORNEY McKNIGHT: Objection; form.</p> <p>10 THE WITNESS: I have not seen the 11 North Carolina Democratic Party platform so I 12 have no idea.</p> <p>13 BY ATTORNEY THEODORE:</p> <p>14 Q. Okay. I just want you to assume with me that 15 the Democratic Party platform -- well, let's 16 strike that.</p> <p>17 Are you aware that the national 18 Democratic Party platform has in past election 19 years endorsed the Black Lives Matter movement?</p> <p>20 A. I actually haven't seen the Democratic Party 21 platform in past election years so I don't know.</p> <p>22 Q. Let's just assume -- take Black Lives Matter as 23 an example that the Democratic Party platform 24 contains a statement supporting Black Lives 25 Matter and the Republican Party platform</p> <p style="text-align: right;">164</p>



<p>1 contains no such statement.</p> <p>2 A. Okay.</p> <p>3 Q. If the column on -- I'm just going to use your</p> <p>4 Table 6 as an example.</p> <p>5 If the column on Table 6 where you said</p> <p>6 "Party" was replaced with a column that said</p> <p>7 whether the candidate has endorsed a platform</p> <p>8 that supports the Black Lives Matter movement,</p> <p>9 this table would show that the column explains</p> <p>10 divergent voting preferences just as well as the</p> <p>11 column that you have here reflecting the party.</p> <p>12 Is that true?</p> <p>13 A. In a technical sense, maybe. They're not in any</p> <p>14 sense equivalent.</p> <p>15 Q. Why aren't they in any sense equivalent?</p> <p>16 A. Well, because the party of the candidate is on</p> <p>17 the ballot, and the position, whether it exists</p> <p>18 or not about Black Lives Matter or any other</p> <p>19 policy issue is not on the ballot, and so there</p> <p>20 are things that voters might likely be aware of</p> <p>21 and there are things that they might be less</p> <p>22 aware of.</p> <p>23 Your example is Black Lives Matter, but</p> <p>24 party platforms -- actually, I read a book once</p> <p>25 about party platforms. Luckily, it doesn't</p> <p style="text-align: right;">165</p>	<p>1 Q. That wouldn't be based on anything you could</p> <p>2 determine from the table, though. That would be</p> <p>3 based on your -- well, sorry. Go ahead.</p> <p>4 A. I would say if that was what was in the table,</p> <p>5 then it would establish that the simple policy</p> <p>6 difference like the party's different positions</p> <p>7 on daylight savings time would do a better job</p> <p>8 of predicting how people vote than the race of</p> <p>9 the candidate.</p> <p>10 So again, if you just want to continue</p> <p>11 to pile up other things that this kind of a</p> <p>12 table would show is more important than race,</p> <p>13 it's correct because race makes almost no</p> <p>14 difference at all in these votes. Almost</p> <p>15 anything you can put it on the other side will</p> <p>16 do a better job.</p> <p>17 Q. All right. I'm going to make a statement and</p> <p>18 then I'm going to ask you a question about that</p> <p>19 statement. Okay.</p> <p>20 Here's the statement:</p> <p>21 Black voters in the relevant regions of</p> <p>22 North Carolina cohesively agree on which</p> <p>23 candidate's policies will better advance the</p> <p>24 interests of black people and cohesively vote</p> <p>25 for the same candidate based on that</p> <p style="text-align: right;">167</p>
<p>1 include any party platforms now because I was in</p> <p>2 graduate school a long time ago.</p> <p>3 There's an astonishing array of issues</p> <p>4 in party platform. In your example, it wouldn't</p> <p>5 surprise me at all if we could pick out a</p> <p>6 hundred different things that are in the</p> <p>7 Democratic platform and not in the Republican or</p> <p>8 in the Republican and not in the Democratic.</p> <p>9 And, yes, if they're perfectly aligned</p> <p>10 with that party's split, we could replace</p> <p>11 Democrat and Republican here, and every one of</p> <p>12 those issues, no matter how trivial, would</p> <p>13 seemingly explain this except, first of all,</p> <p>14 there are still policy issues so it doesn't</p> <p>15 change the fact that when we substitute race, we</p> <p>16 see no effect, and when we put in party, we see</p> <p>17 party.</p> <p>18 And in and of itself it wouldn't tell</p> <p>19 us if they -- you know, maybe the two parties at</p> <p>20 some point probably had different party platform</p> <p>21 positions on daylight savings time, but I don't</p> <p>22 think that would suggest that an adequate</p> <p>23 explanation for voting behavior in</p> <p>24 North Carolina was the position of the parties</p> <p>25 on daylight savings time.</p> <p style="text-align: right;">166</p>	<p>1 determination.</p> <p>2 ATTORNEY McKNIGHT: Objection; form.</p> <p>3 THE WITNESS: I have no evidence on</p> <p>4 that issue.</p> <p>5 BY ATTORNEY THEODORE:</p> <p>6 Q. Okay. The evidence that you've reviewed in this</p> <p>7 case is consistent with that statement, correct?</p> <p>8 A. I guess depends on what you mean by consistent.</p> <p>9 The evidence that's been presented here, which</p> <p>10 is limited and focused, as it should be, on the</p> <p>11 issues in the case, doesn't contradict that, it</p> <p>12 doesn't prove that's incorrect, but it doesn't</p> <p>13 prove that it's correct either.</p> <p>14 Q. Okay. And nothing in your report attempts to</p> <p>15 falsify that statement, correct?</p> <p>16 A. I'm not addressing -- neither Collingwood or I</p> <p>17 are addressing that issue.</p> <p>18 Q. And nothing in your report shows that a</p> <p>19 candidate's party affiliation is a better</p> <p>20 explanation for black voting behavior than the</p> <p>21 statement that I read, correct?</p> <p>22 ATTORNEY McKNIGHT: Objection; form.</p> <p>23 THE WITNESS: In this analysis, in</p> <p>24 Dr. Collingwood's and my analysis, no.</p> <p>25 I mean, what I know about American</p> <p style="text-align: right;">168</p>

<p>1 voting behavior, what you're suggesting is very</p> <p>2 unlikely to be true, but that's not what this</p> <p>3 analysis -- that's not what Dr. Collingwood is</p> <p>4 attempting to show, it's not what I am</p> <p>5 attempting to analyze. We could analyze that,</p> <p>6 but neither of us are.</p> <p>7 I don't think that's what the analysis</p> <p>8 would show, but having not done it, I can't say</p> <p>9 the analysis we've done demonstrates that.</p> <p>10 BY ATTORNEY THEODORE:</p> <p>11 Q. All right. Let me turn to page 19 of your</p> <p>12 report. You see about midway through the page:</p> <p>13 "With the addition of this</p> <p>14 candidate information, the election</p> <p>15 analysis provided by Dr. Collingwood</p> <p>16 clearly demonstrates that the party</p> <p>17 affiliation of the candidates best</p> <p>18 explains the divergent voting</p> <p>19 preferences of black and white voters</p> <p>20 in North Carolina elections."</p> <p>21 Did I read that right?</p> <p>22 A. Yes.</p> <p>23 Q. And the candidate information you're referring</p> <p>24 to again is race and party identification of the</p> <p>25 candidate?</p> <p style="text-align: right;">169</p>	<p>1 A. At a minimum, that's true.</p> <p>2 What is also true because the table</p> <p>3 itself shows that there are very consistent</p> <p>4 patterns of voting for Democrat and Republican</p> <p>5 for black and white voters. It also</p> <p>6 demonstrates that on its own feet, it's a very</p> <p>7 powerful explanation because it's producing</p> <p>8 extremely fixed results across elections time</p> <p>9 and offices. That's unusual.</p> <p>10 So we know that when we look across</p> <p>11 these elections, we're looking at different</p> <p>12 points in time. We're looking at things as</p> <p>13 diverse of being governor versus being a court</p> <p>14 judge. We're looking at candidates who are</p> <p>15 different people who presumably have different</p> <p>16 characteristics, pluses and minuses, all of</p> <p>17 which appears to be compressed out of the</p> <p>18 explanation by just looking at the amazingly</p> <p>19 stable results by party.</p> <p>20 As it happens, we can also look at the</p> <p>21 race of the candidate, and that's one thing we</p> <p>22 can take out. How other things would fair, it's</p> <p>23 not clear, but it is not just that party is</p> <p>24 strong compared to race. It's that party is</p> <p>25 structuring these results in a very durable way</p> <p style="text-align: right;">171</p>
<p>1 A. Okay.</p> <p>2 Q. And would a more accurate version of that</p> <p>3 sentence be that the election analysis provided</p> <p>4 by Dr. Collingwood in your opinion clearly</p> <p>5 demonstrates that the party affiliation of the</p> <p>6 candidates better explains than the</p> <p>7 racial -- than the race of the candidate the</p> <p>8 divergent voting preferences of black and white</p> <p>9 voters in North Carolina?</p> <p>10 A. I mean, I'm not sure I'm understanding what the</p> <p>11 difference is between your sentence and my</p> <p>12 sentence.</p> <p>13 Q. The sentence you wrote uses the word "best"</p> <p>14 without a comparator, correct?</p> <p>15 A. Well, there are only two pieces of information</p> <p>16 about the candidate. We have race and party,</p> <p>17 and so "best" explains -- yes, "best" explains</p> <p>18 relative to race.</p> <p>19 Q. Okay. So what you mean in that sentence is that</p> <p>20 in your view the analysis demonstrates that</p> <p>21 party affiliation of the candidate best explains</p> <p>22 in comparison to racial affiliation of the</p> <p>23 candidate the divergent voting preferences of</p> <p>24 black and white voters in North Carolina</p> <p>25 elections?</p> <p style="text-align: right;">170</p>	<p>1 and race is not altering that structure.</p> <p>2 Q. Okay. But you're not making the claim that</p> <p>3 you've analyzed or concluded that party</p> <p>4 affiliation of the candidates best explains in</p> <p>5 comparison to other possible explanations the</p> <p>6 divergent voting preferences of black and white</p> <p>7 voters in North Carolina because you only</p> <p>8 analyzed the role of party affiliation of the</p> <p>9 candidate versus race of the candidates for this</p> <p>10 report, correct?</p> <p>11 A. Again, there are lots of results that might</p> <p>12 suggest that we need a lot more information and</p> <p>13 there could be a lot more going on here, but it</p> <p>14 certainly doesn't preclude the possibility that</p> <p>15 something else is important here, but it's very</p> <p>16 clear that from the analysis we have here, all</p> <p>17 the empirical information we have here, that a</p> <p>18 party is a very powerful explanation for voting</p> <p>19 behavior in North Carolina as it is everywhere</p> <p>20 in the country.</p> <p>21 The party affiliation of candidates</p> <p>22 matters, but I don't know how else to -- I don't</p> <p>23 know how else to say that. It's not always been</p> <p>24 true to the degree it is now, but currently</p> <p>25 partisanship in terms of the -- the party of the</p> <p style="text-align: right;">172</p>

<p>1 candidate is -- Democratic districts elect 2 Democrats, Republican districts elect 3 Republicans. We're down to seven states where 4 there's anything really anything up for grabs in 5 this election. We're down in the US Congress, 6 we're down to less than 50 congressional 7 districts where there's much chance of anything 8 happening, and that's simply because in most 9 parts of the country and most districts in the 10 country and most states in the country, the 11 party of the candidate is tantamount to 12 election.</p> <p>13 In Texas, the real contest is in the 14 Republican primary because for most of Texas 15 that's the answer as to who is going to be your 16 governor, your lieutenant governor, your 17 senator, your president.</p> <p>18 Q. All right. Moving on, your report does not 19 offer any opinion or evidence that white voters 20 constitute the majority of Democratic voters in 21 the demonstration area District 1 or District 2, 22 correct?</p> <p>23 A. Correct. I did no demographic analysis.</p> <p>24 Q. And you haven't offered any opinion in your 25 report that Republicans aggressively recruit</p> <p style="text-align: right;">173</p>	<p>1 be fielding more black candidates than 2 Republican parties because if the analysis is 3 correct, virtually all of the black voters in 4 North Carolina are Democrats.</p> <p>5 Q. You haven't offered any opinion in your report 6 that elected candidates preferred by white 7 voters are responsive to the needs of black 8 constituents in Senate Districts 1 or 2; is that 9 correct?</p> <p>10 ATTORNEY McKNIGHT: Objection; form.</p> <p>11 THE WITNESS: Neither Dr. Collingwood 12 nor I did any analysis of responsiveness of 13 candidates or representatives in any of the 14 districts.</p> <p>15 BY ATTORNEY THEODORE:</p> <p>16 Q. Okay. And you haven't offered any opinion that 17 elected candidates who are white are responsive 18 to the needs of black constituents in Senate 19 Districts 1 and 2, correct?</p> <p>20 ATTORNEY McKNIGHT: Objection; form.</p> <p>21 THE WITNESS: I don't think -- again, 22 all I can tell you is what the table shows, and 23 the table shows a lot of stuff. Among other 24 things, it shows that black voters are just as 25 likely to support a white candidate as a black</p> <p style="text-align: right;">175</p>
<p>1 black candidates to run in elections in 2 North Carolina or in this area; is that correct?</p> <p>3 ATTORNEY McKNIGHT: Objection; form.</p> <p>4 THE WITNESS: Yeah, I don't think 5 either Dr. Collingwood or I looked at candidate 6 recruitment, although obviously there are 7 Republicans -- I don't know whether Republicans 8 are recruiting black candidates or not, but 9 they've got a candidate in a statewide office 10 and have -- had one earlier as well. So I don't 11 know what that's the result of, but I haven't 12 studied the recruiting practices of the parties 13 in North Carolina.</p> <p>14 BY ATTORNEY THEODORE:</p> <p>15 Q. In fact, of the 49 elections over the four years 16 that you and Dr. Collingwood analyzed, the 17 Republican Party fielded a black candidate in 18 only two of those elections; is that right?</p> <p>19 A. I believe that's correct. And again, I'm not 20 saying the table explains everything, but 21 Dr. Collingwood's table will give you a pretty 22 nice idea of why that might be. If he's right 23 and 99 percent of black voters vote for the 24 Democrat candidate, then it's going to be 25 slightly that the Democratic Party is going to</p> <p style="text-align: right;">174</p>	<p>1 candidate when they run as a Democrat.</p> <p>2 And again, if you're saying that white 3 Democrats are no more responsive to the issue of 4 black candidates than are black Democrats or 5 they're not responsive at all, I'm not sure what 6 you're saying.</p> <p>7 You're asking me if a white candidate 8 or a white elected official can be responsive to 9 black issues, most of the white -- most of the 10 Democratic candidates are white. I assume 11 they're responsive to black issues or they 12 wouldn't be getting 100 percent of the black 13 vote.</p> <p>14 BY ATTORNEY THEODORE:</p> <p>15 Q. All right. Your aware that Senate District 1 or 16 2 are majority white districts?</p> <p>17 A. I believe that's correct.</p> <p>18 Q. Okay. And that means that every white voter in 19 Senate District 1 and 2 lives in a majority 20 white senate district, correct?</p> <p>21 A. I think that makes sense.</p> <p>22 Q. And no black voter in Senate District 1 and 2 23 lives in a majority black senate district?</p> <p>24 A. I think that's correct.</p> <p>25 Q. Okay. None of your analysis suggests that in</p> <p style="text-align: right;">176</p>

<p>1 the future candidates preferred by black voters  2 in the demonstration area District 1 or  3 District 2 are likely to attract greater white  4 support than they did in the elections that you  5 and Dr. Collingwood looked at; is that correct?  6 ATTORNEY McKNIGHT: Objection; form.  7 THE WITNESS: I don't think either  8 Dr. Collingwood or I made any speculation about  9 future trends in voting.  10 BY ATTORNEY THEODORE:  11 Q. Okay. None of your analysis suggests that in  12 the future, candidates preferred by black voters  13 in the relevant regions are likely to attract  14 greater white support than they have in the  15 past; is that correct?  16 ATTORNEY McKNIGHT: Objection; form.  17 THE WITNESS: Yeah. I would assume  18 that the pattern we're seeing now at least in  19 the short term is relatively stable, relative  20 support for Democrat and Republican candidates  21 is not going to change in the short term.  22 Majority Republican districts are going to  23 mostly elect Republicans and majority Democratic  24 districts will mostly elect Democrats.  25 ATTORNEY THEODORE:</p> <p style="text-align: right;">177</p>	<p>1 thing as the presence of party as an issue in  2 the election or -- it's the easiest way for  3 voters to be aware of the party affiliation of  4 candidates, but there are lots of examples all  5 the way down to school board elections where the  6 party affiliation of candidates is very clear to  7 voters. So it's certainly one mechanism for  8 assessing that, but it's not exclusive in the  9 sense that -- I see lots of nonpartisan  10 elections that were dominated by party  11 affiliation of candidates even where it's not  12 indicated on the ballot.  13 Q. Okay. You say here "The final Supreme Court  14 contest in 2016 is also instructive."  15 Did I read that correctly?  16 A. Yes.  17 Q. Okay. And the reason you're offering this as a,  18 quote, unquote, instructive election is because  19 it's the last election for the State Supreme  20 Court that did not have an official partisan  21 structure; is that correct?  22 A. I think there are two -- two reasons why -- to  23 focus on it and talk about it, and one is there  24 are no partisan labels on the ballot and the  25 other is that it just doesn't look like any of</p> <p style="text-align: right;">179</p>
<p>1 Q. And in fact, the trend with respect to white  2 crossover voting is moving in the direction in  3 this area, in this region -- let me strike that.  4 In fact, in this region, white  5 crossover voting has been decreasing since 2016;  6 is that correct?  7 A. The point estimates are -- yeah, show a modest  8 trend in that direction whether it's -- you  9 know, whether it's a continuous trend or what it  10 reflects, I don't know, but, yes, that area  11 seems to be voting slightly more Republican than  12 it has previous.  13 Q. All right. Let's turn to page 8 of your report.  14 You comment here on the election  15 between Michael Morgan and Bob Edwards for the  16 State Supreme Court in 2016.  17 A. Yes.  18 Q. And do you believe that the absence of any party  19 indicator on the ballot makes this a  20 particularly instructive election to look at to  21 test whether the candidate's race is responsible  22 for polarization as opposed to the candidate's  23 party?  24 A. It's potentially something to look at. The  25 presence of party on the ballot is not the same</p> <p style="text-align: right;">178</p>	<p>1 the other elections.  2 You can look at Dr. Collingwood's dot  3 plot or whatever, it's wildly different from all  4 the other elections, so that suggests that  5 something different is operating there.  6 Q. And this is the only nonpartisan statewide  7 election that's available in the elections that  8 you and Dr. Collingwood looked at, correct?  9 A. Yes. And it's in the recent time period 2016  10 forward, this is the only nonpartisan election  11 that's in that pool of elections.  12 Q. Okay. And let's turn -- I'm going to talk about  13 some of the numbers on in Table 2 on page 7, if  14 you want to turn to that.  15 All right. In the demonstration area,  16 Morgan gets 78 percent of the black vote,  17 correct?  18 A. Correct.  19 Q. And you agree that reflects cohesive black  20 voting?  21 A. Reflects what?  22 Q. Reflects cohesive black voting.  23 A. Again, if we're going to use 75 percent as the  24 line which is at least a possibility, it's above  25 75 percent.</p> <p style="text-align: right;">180</p>

<p>1 Q. And again, 75 percent is a line that you</p> <p>2 yourself have used in the past, correct?</p> <p>3 A. I have used that, yes.</p> <p>4 Q. And he gets 83 percent of the black vote in</p> <p>5 Senate District 2 and 70 percent in</p> <p>6 Senate District 1, correct?</p> <p>7 A. Correct.</p> <p>8 Q. So on average in our three areas of interest,</p> <p>9 he's getting above 75 percent of the black vote;</p> <p>10 is that correct?</p> <p>11 A. I'm not sure why we're averaging across -- I</p> <p>12 mean, the demonstration area is not different</p> <p>13 from District 1 and District 2. It's -- the</p> <p>14 demonstration area contains -- by definition is</p> <p>15 intended to contain roughly the area of</p> <p>16 District 1 and 2, so averaging them together is</p> <p>17 kind of an odd thing to do. From that sense, if</p> <p>18 you want to know an overall level, you know, you</p> <p>19 could look at the demonstration area, you could</p> <p>20 compare the two districts there.</p> <p>21 I don't think we need to summarize them</p> <p>22 to say that they both show either a little bit</p> <p>23 above or a little bit below 75 percent so they</p> <p>24 show substantial cohesion, and also they are</p> <p>25 clearly substantially different, not 1 point or</p> <p style="text-align: right;">181</p>	<p>1 explain -- how much more you can explain than 98</p> <p>2 or 99 percent. That's what party explains. The</p> <p>3 party on the ballot and virtually every black</p> <p>4 voter is going to vote for the Democrat. Take</p> <p>5 it off the ballot and that drops down to</p> <p>6 75 percent will favor the black candidate. I</p> <p>7 think that tells you -- that also tells you in</p> <p>8 terms of the general elections in North Carolina</p> <p>9 what's driving the behavior of black voters.</p> <p>10 You certainly don't see 25 percent crossover in</p> <p>11 any of the other elections among black voters</p> <p>12 for a candidate -- or a Republican candidate.</p> <p>13 Q. Well --</p> <p>14 A. If we're talking about nonpartisan elections,</p> <p>15 this is some evidence that -- for Gingles 2,</p> <p>16 some evidence that black voters might -- if they</p> <p>17 have only one election, but in that one election</p> <p>18 black voters are showing decided preference for</p> <p>19 the black candidate and that might suggest that</p> <p>20 in nonpartisan elections there may be cohesion</p> <p>21 among black voters in favor of black candidates.</p> <p>22 Q. This shows that even in the absence of a</p> <p>23 partisan indication black voters cohesively</p> <p>24 prefer a black candidate, correct?</p> <p>25 A. You say even in the absence of a party, black</p> <p style="text-align: right;">183</p>
<p>1 2 points, but 20 points or more different from</p> <p>2 any level in any of the partisan elections for</p> <p>3 black voters.</p> <p>4 Q. And you say on page 8 that black voter support</p> <p>5 for Morgan is at 75 percent, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So you agree that this election shows</p> <p>8 that black voters are still voting cohesively</p> <p>9 for a black candidate even when there are no</p> <p>10 partisan signals on the ballot?</p> <p>11 A. That would be correct.</p> <p>12 Q. Okay. So isn't this inconsistent with the view</p> <p>13 that party affiliation on the ballot is</p> <p>14 sufficient to explain black voter cohesion?</p> <p>15 A. No.</p> <p>16 Q. Why not?</p> <p>17 A. Because we have -- there is no party affiliation</p> <p>18 on the ballot, and absent that party</p> <p>19 affiliation, we can see that being the black</p> <p>20 candidate versus the white candidate made a</p> <p>21 difference, although substantially less</p> <p>22 difference than what we see when party is on the</p> <p>23 ballot.</p> <p>24 And so the question is not sort of does</p> <p>25 that mean that party has not -- is not enough to</p> <p style="text-align: right;">182</p>	<p>1 voters prefer the black candidate.</p> <p>2 Q. Cohesively prefer the black candidate.</p> <p>3 A. Even in the absence of party, black voters</p> <p>4 prefer the black candidate, right?</p> <p>5 Q. I'm asking --</p> <p>6 A. Maybe I misunderstood the question. I thought</p> <p>7 that's what you were saying. Because with the</p> <p>8 presence of party, black voters don't prefer the</p> <p>9 black candidate, they prefer the white candidate</p> <p>10 or the black candidate at equal levels. Absence</p> <p>11 party, there's some evidence in one election</p> <p>12 that black voters might have a preference --</p> <p>13 reduced but a preference for the black</p> <p>14 candidate, and then white voters -- the white</p> <p>15 bloc voting has completely disappears. White</p> <p>16 bloc voters showing no cohesion at all.</p> <p>17 So again, most of the point of this</p> <p>18 analysis is not about white -- I'm sorry -- not</p> <p>19 about black cohesion, it's about Gingles 3 about</p> <p>20 whether there's legally significant white bloc</p> <p>21 voting. And here, as soon as you take away the</p> <p>22 party indicator, suddenly you have white voters</p> <p>23 voting at levels for the black candidate that</p> <p>24 equals their vote for the white candidate and</p> <p>25 that tells you something I think about the</p> <p style="text-align: right;">184</p>



<p>1 influence of race absent party for white voters 2 and for white bloc voting, and that's the 3 critical -- that's the critical issue here. 4 It's not about black cohesion. It's 5 about white voting, it's about Gingles 3, and 6 it's about whether white voters on account of 7 race are unwilling to support black candidates 8 or black preferred black candidates, and there's 9 just no evidence here that the behavior of white 10 voters as being affected in any way that's 11 legally significant with regard to the fact that 12 one of these candidates is black and one of them 13 is white or that one of them is preferred. 14 Q. Dr. Alford, we don't have that much time left, 15 so I would just ask if you can keep the answers 16 a little more precise. 17 You offer a number of opinions in your 18 report not just about the explanation for white 19 cohesive voting but also the explanation for 20 black cohesive voting, don't you? 21 A. Yes. 22 Q. And so putting aside what this election shows 23 about white cohesive voting, isn't it true that 24 this election shows that the race of the 25 candidate independent of the party of the</p> <p style="text-align: right;">185</p>	<p>1 A. Yes. 2 Q. And this election shows -- this election shows 3 that even if there's no partisan indication on 4 the ballot, the race of the candidate has 5 explanatory value or the cohesion we see in 6 black voter preferences, correct? 7 A. In this election, yes. 8 Q. All right. Let me turn to page 16 of your 9 report. 10 A. Yes. 11 Q. On page 16, you reproduce a plot taken from the 12 preliminary injunction stage report of 13 Dr. Barreto, correct? 14 A. Correct. 15 Q. Would you call this a scatterplot or a dot plot? 16 A. I would call it a scatterplot. 17 Q. Okay. Did Dr. Barreto's report state that one 18 could draw conclusions from this scatterplot 19 about the minimum BVAP percentage required to 20 elect a black preferred candidate at the level 21 of a district? 22 A. I do not recall. 23 Q. Okay. Sitting here today, you can't state that 24 you understood Dr. Barreto to be suggesting that 25 this scatterplot provided any information about</p> <p style="text-align: right;">187</p>
<p>1 candidate has some explanatory value for black 2 voter preferences? 3 ATTORNEY McKNIGHT: Objection; form. 4 THE WITNESS: Again, I would like to 5 point out that this is a single election in 6 which the preferences might well have been the 7 reverse of this and it would still just be a 8 single election. So we can't really say -- 9 doesn't stand out well as a piece of evidence 10 against 48 other elections. 11 So certainly in this election, the 12 results show black voters prefer the black 13 candidate. Whether that would be the opposite 14 and if there was a second election, we don't 15 know, so we don't have a lot of evidence there 16 and we have a lot of evidence about what 17 difference it makes to black voters whether the 18 candidate is white or black in the partisan 19 elections. 20 BY ATTORNEY THEODORE: 21 Q. Dr. Alford, you're the one who focused on this 22 election in your report; isn't that true? 23 A. That's correct. 24 Q. Okay. So you're offering this election as an 25 instructive election, correct?</p> <p style="text-align: right;">186</p>	<p>1 the minimum BVAP required to elect a black 2 preferred candidate at the level of a district; 3 is that correct? 4 ATTORNEY McKNIGHT: Objection; form. 5 THE WITNESS: All I remember is that 6 Dr. Barreto for some reason thought it was 7 important to include it, so I thought it was 8 useful and I think the judge commented on it. 9 There was some issue about whether this was even 10 the right county to be looking at, so I just 11 brought this forward with the right 12 candidates -- I'm sorry -- with the right 13 counties, and I think the plot pretty much 14 speaks for itself. 15 BY ATTORNEY THEODORE: 16 Q. I just want to repeat, you do not understand, 17 based on your knowledge here today, Dr. Barreto 18 to have been suggesting that this scatterplot 19 was useful for determining the BVAP percentage 20 needed to elect a black preferred candidate in a 21 particular district; is that correct? 22 A. I do not -- I do not know whether he intended it 23 to be useful for that or not. I do not know 24 what he intended to be useful. I don't recall. 25 Q. Let's turn to page 18. Sorry. 17.</p> <p style="text-align: right;">188</p>



<p>1 And this is a scatterplot that you</p> <p>2 created based on Dr. Collingwood's data; is that</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Can you walk me through what this scatterplot in</p> <p>6 Figure 2 is showing, you know, X axis, Y axis,</p> <p>7 the dots, et cetera.</p> <p>8 A. I'm sorry. So it's showing you the percentage</p> <p>9 vote for the candidates, Democrat and</p> <p>10 Republican, on the vertical axis, and on the</p> <p>11 horizontal axis it's just the BVAP percentage.</p> <p>12 So again, as you go up, you can see</p> <p>13 sort of in the middle there where you have .5,</p> <p>14 those are all the precincts that are clustered</p> <p>15 around 50 percent BVAP. At the far right of the</p> <p>16 graph, you have precincts that are more than 80,</p> <p>17 85 percent black, and then the far left you have</p> <p>18 precincts that are less than 10 percent black.</p> <p>19 Q. All right. So if a dot -- there's a horizontal</p> <p>20 line at .5 percent of the vote for a particular</p> <p>21 candidate. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. If a dot is like straddling that horizontal line</p> <p>24 at .5, so how do you tell from the chart whether</p> <p>25 the dot represents a precinct that gave more</p> <p style="text-align: right;">189</p>	<p>1 A. That's correct.</p> <p>2 Q. And that tight fit is what you expect to see</p> <p>3 when there is highly polarized voting on the</p> <p>4 basis of the race of the voter; is that right?</p> <p>5 A. This is -- we're talking about the Democratic</p> <p>6 and the Republican candidate, so this is what</p> <p>7 you would expect if black and white voters vote</p> <p>8 differently with regard to Democratic and</p> <p>9 Republican candidates, exactly what we've</p> <p>10 already seen exhaustively in the tables.</p> <p>11 Q. You conclude that the vote for Cooper, who's the</p> <p>12 black preferred candidate in 2020, starts to</p> <p>13 move above 50 percent in certain precincts</p> <p>14 somewhere around 37 percent BVAP with Cooper</p> <p>15 clearly winning in precincts well below</p> <p>16 50 percent BVAP.</p> <p>17 Do you see that on page 16?</p> <p>18 A. Yes.</p> <p>19 Q. All right. You would agree a district is</p> <p>20 composed of many precincts, correct?</p> <p>21 A. I think that's correct, yes.</p> <p>22 Q. Do you know how many precincts are in Senate</p> <p>23 Districts 1 and 2 in the 2023 North Carolina</p> <p>24 Senate map?</p> <p>25 A. Off the top of my head, no.</p> <p style="text-align: right;">191</p>
<p>1 than 50 percent to the candidate?</p> <p>2 A. If it's straddling, you could query the dot, but</p> <p>3 if it's straddling, it's telling you that</p> <p>4 basically that's a precinct that's pretty evenly</p> <p>5 divided between two candidates.</p> <p>6 Q. And if more than half the dot is above the line,</p> <p>7 does that mean that the precinct gave more than</p> <p>8 50 percent to the candidate?</p> <p>9 A. That's correct.</p> <p>10 Q. That's correct. Okay.</p> <p>11 So if some portion of the dot is above</p> <p>12 the line but the center of the dot is below the</p> <p>13 line, that would mean that the precinct gave</p> <p>14 less than 50 percent of the vote to the</p> <p>15 candidate?</p> <p>16 A. That would be correct.</p> <p>17 Q. One thing this plot shows is that there is a</p> <p>18 fairly linear relationship between the BVAP</p> <p>19 percentage in each precinct and a percentage of</p> <p>20 the vote for the black preferred candidate</p> <p>21 within the precinct; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And the red dots are fairly tightly clustered</p> <p>24 around the red line and the blue dots are fairly</p> <p>25 tightly clustered around the blue line?</p> <p style="text-align: right;">190</p>	<p>1 Q. Probably at least dozens, would you say?</p> <p>2 A. At least.</p> <p>3 Q. Each of those precincts has a different</p> <p>4 population, right?</p> <p>5 A. That's correct.</p> <p>6 Q. And your dot plots don't reflect the population</p> <p>7 differentials, right?</p> <p>8 A. They do not.</p> <p>9 Q. So let's imagine you have a district composed of</p> <p>10 two districts, so the first precinct has 100</p> <p>11 voters and a BVAP of 37 percent and it gives</p> <p>12 52 percent of its vote to the black preferred</p> <p>13 candidate.</p> <p>14 A. Yes.</p> <p>15 Q. So that's -- it gets 52 votes to the black</p> <p>16 preferred candidate, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Precinct 2 has 200 voters and a BVAP of</p> <p>19 37 percent and gives 47 percent of its vote to</p> <p>20 the black preferred candidate.</p> <p>21 Are you with me?</p> <p>22 A. Yes.</p> <p>23 Q. So Precinct 2 gives 47 percent times 200 to the</p> <p>24 black preferred candidate which is 95, right?</p> <p>25 If I'm adding correctly. Or 94. Apologies.</p> <p style="text-align: right;">192</p>

<p>1 A. I won't quibble about 1 percentage point 2 difference with you. 3 Q. Thanks. All right. 4 So you have a total of 300 votes. You 5 have 52 votes for the black preferred candidate 6 in Precinct 1 and 94 from Precinct 2, and that's 7 146 out of 300 votes, correct? 8 A. Correct. 9 Q. Okay. So the black preferred candidate loses 10 that district, correct? 11 A. That's correct. 12 Q. And that's true even though there was a precinct 13 that had a BVAP of 37 percent that was giving 14 more than 50 percent of its vote to the black 15 preferred candidate, correct? 16 A. Correct. 17 Q. All right. So you have to take population of 18 precincts into account before drawing any 19 conclusions from a scatterplot like this about 20 whether a district could elect a black preferred 21 candidate, correct? 22 A. I'm not -- so, yeah, there are a lot of things 23 being taken into account. I'm not drawing a 24 district here. And, yes, what this suggests is 25 that there are -- unlike districts which are</p> <p style="text-align: right;">193</p>	<p>1 in northeastern North Carolina that has 2 somewhere around 37 percent BVAP, correct? 3 A. Again, that would depend on -- that would depend 4 on the -- obviously, it is not the case that 5 every precinct that is 37 percent black votes 6 majority for the black preferred candidate, it 7 would not be true of every senate district at 8 37 percent black. 9 Q. Okay. And you're not offering any opinion in 10 this case that a senate district in the 11 northeastern region of North Carolina could 12 typically elect black candidates at a BVAP at 13 around 37 percent, are you? 14 A. Obviously, it depends what you mean by 15 typically. I'm using this to sort of inform as 16 I think the judge took it to be what we see in 17 the bar chart, in this case the bar chart that 18 was produced by Dr. Collingwood, and bar charts 19 lump a lot of things together and can be 20 difficult to understand. 21 At least as I understand what 22 Dr. Collingwood concluded from his bar chart was 23 that you did not need to be at 50 percent BVAP 24 to create a successful district that would elect 25 a black preferred candidate.</p> <p style="text-align: right;">195</p>
<p>1 large and don't give us a lot of numerosity, 2 precincts give us lots of numerosity and lots of 3 variation. And one of the questions you might 4 ask about whether you need to be at 50 percent 5 black in order to be able to win would be are 6 there -- what are geographies in which you're at 7 that level at which also have numerosity where 8 we can look at that, and that's what this does. 9 It is intended as I assume Dr. Barreto 10 intended it, but I don't know, simply to be 11 illustrative of another setting in which you can 12 look at the ability of black preferred 13 candidates to win in relationship to the BVAP of 14 that jurisdiction or that geography I guess 15 would be better to say about precincts. Whether 16 they can ultimately be collected into compact, 17 contiguous, populated enough district is really 18 another question, but that's not my purpose 19 here. Again, I don't think it was Dr. Barreto's 20 purpose, but it was not my purpose here. 21 Q. And so it's incorrect to say that simply because 22 an individual precinct in northeast 23 North Carolina at somewhere around 37 percent 24 BVAP votes to elect a black preferred candidate 25 that the same would be true of a senate district</p> <p style="text-align: right;">194</p>	<p>1 Q. And we'll get there. 2 A. Okay. So my view is I'm just showing something 3 that the judge had mentioned previously in the 4 case updated so that it could be applied in this 5 case with the right counties. And again, I 6 think it's consistent -- entirely consistent 7 with Dr. Collingwood's bar chart. 8 Q. But you were not offering an opinion in this 9 case that a senate district in the northeastern 10 region of North Carolina could elect black 11 candidates at a BVAP of around 37 percent, are 12 you? 13 A. Well, let me see. The conclusion I'm offering 14 you, it also demonstrates that black voters do 15 not need to be majority in a district in order 16 to elect a Democratic candidate. 17 Q. All right. So I'm just going to say again, you 18 were not offering an opinion in this case that a 19 senate district in northeastern region in 20 North Carolina could elect black candidates at a 21 BVAP up somewhere around 37 percent, are you? 22 A. I'm not saying that that's necessarily true. 23 I'm not saying it's not true. I'm just saying 24 this demonstrates I think fairly clearly that 25 cross point between these lines is not at</p> <p style="text-align: right;">196</p>

<p>1 50 percent, it's well below 50 percent, and</p> <p>2 that's compatible with Dr. Collingwood's</p> <p>3 conclusion that it doesn't need to be majority,</p> <p>4 and this bar chart that shows lots of districts</p> <p>5 that are not majority that perform, and that</p> <p>6 leads to my conclusion that you do not need to</p> <p>7 have a majority district for it to perform.</p> <p>8 How far below majority, I'm not saying</p> <p>9 it necessarily goes all the way to 37 percent</p> <p>10 but clearly goes below 50 percent and at least</p> <p>11 in some instances based on, again, both this and</p> <p>12 Dr. Collingwood's chart fairly substantially</p> <p>13 below 50 percent.</p> <p>14 Q. Okay. Do you agree that it would be incorrect</p> <p>15 to extrapolate from this chart that a senate</p> <p>16 district composed of some of the precincts in</p> <p>17 this chart could elect a black preferred</p> <p>18 candidate at a particular BVAP percentage simply</p> <p>19 because an individual precinct does so at the</p> <p>20 same BVAP percentage?</p> <p>21 ATTORNEY McKNIGHT: Objection; form.</p> <p>22 THE WITNESS: Yes, I would agree.</p> <p>23 Again, I don't conclude that you can draw a</p> <p>24 37 percent district. I don't intend this to</p> <p>25 indicate that this would necessarily mean you</p> <p style="text-align: right;">197</p>	<p>1 A. That's correct.</p> <p>2 Q. All right. Figure 3 is the same as Figure 2</p> <p>3 just for the 2016 North Carolina governor race;</p> <p>4 is that right?</p> <p>5 A. That's correct.</p> <p>6 ATTORNEY McKNIGHT: Elisabeth, if we're</p> <p>7 going into a new topic or a new area, we're</p> <p>8 going close to two hours without a break. It</p> <p>9 may sense to take a short break.</p> <p>10 ATTORNEY THEODORE: Yes. That's fine.</p> <p>11 Let's take a break.</p> <p>12 (Brief Recess: 3:28 to 3:37 p.m.)</p> <p>13 BY ATTORNEY THEODORE:</p> <p>14 Q. So I think we were looking at your Table 3 --</p> <p>15 your Figure 3 on page 18 of your report.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Do you believe that you can draw reliable</p> <p>18 conclusions about the BVAP percentage at which a</p> <p>19 district in northeastern North Carolina could be</p> <p>20 expected to elect a black preferred candidate on</p> <p>21 the basis of your Figure 3?</p> <p>22 A. Yes.</p> <p>23 Q. What conclusions can you draw on the basis of</p> <p>24 your Figure 3 about the BVAP percentage at which</p> <p>25 a district could be expected to elect a black</p> <p style="text-align: right;">199</p>
<p>1 could draw that. So if you're going to draw</p> <p>2 from this and you're going to extrapolate from</p> <p>3 this and say you can draw a 37 percent</p> <p>4 performing district, this doesn't say that's</p> <p>5 true, it doesn't say it's not true, and it's not</p> <p>6 what you I conclude.</p> <p>7 BY ATTORNEY THEODORE:</p> <p>8 Q. All right. And this scatterplot on Figure 2</p> <p>9 also only reflects results of one election,</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And that's the election for governor in 2020?</p> <p>13 A. Figure 2, yes.</p> <p>14 Q. Are you aware that Governor Cooper generally</p> <p>15 outperforms other black preferred candidates</p> <p>16 among white voters?</p> <p>17 A. I'd have to look at the table. It's in the</p> <p>18 table.</p> <p>19 Q. It sure is. All right. Let's turn to your</p> <p>20 Table 6 on page 14 of your report.</p> <p>21 A. Yes.</p> <p>22 Q. You report that Governor Cooper got 15 percent</p> <p>23 of the white vote in 2020 in the demonstration</p> <p>24 area compared to 13 percent on average for black</p> <p>25 preferred candidates?</p> <p style="text-align: right;">198</p>	<p>1 preferred candidate?</p> <p>2 A. You can draw a conclusion that according to this</p> <p>3 graph, these precinct level results don't</p> <p>4 suggest that a district would have to be above</p> <p>5 50 percent to be effective.</p> <p>6 Q. Okay. Do you believe that you can draw a</p> <p>7 reliable conclusion about the precise BVAP</p> <p>8 percentage at which a district in northeastern</p> <p>9 North Carolina could be expected to elect a</p> <p>10 black preferred candidate on the basis of your</p> <p>11 Figure 3?</p> <p>12 A. No.</p> <p>13 Q. Okay. All right. And let's turn to page 12 of</p> <p>14 Dr. Collingwood's report.</p> <p>15 All right. And are you there?</p> <p>16 A. Yep, just about. Yes.</p> <p>17 Q. All right. And Dr. Collingwood's RPV numbers in</p> <p>18 the demonstration area show that only</p> <p>19 11.61 percent of white voters voted for black</p> <p>20 preferred candidates in the 2022 elections</p> <p>21 compared to 21.02 percent in the 2016 elections;</p> <p>22 is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And is that an additional reason --</p> <p>25 strike that.</p> <p style="text-align: right;">200</p>

<p>1 Is that a reason why the 2016 elections 2 are not likely to be a good predictor of how a 3 black preferred candidate -- strike that. 4 Is that a reason why the 2016 elections 5 are not likely to be a good predictor of the 6 BVAP percentage at which a district would elect 7 a black preferred candidate in 2024 and future 8 years? 9 ATTORNEY McKNIGHT: Objection; form. 10 THE WITNESS: If you were performing an 11 analysis to figure out what that number would 12 be, you would probably be better off going with 13 more recent rather than older data. 14 BY ATTORNEY THEODORE: 15 Q. Okay. And if the percentage of white voters in 16 a majority white precinct voting for the black 17 preferred candidate drops by about 10 points 18 from 2016 to 2022, then the overall vote for the 19 black preferred candidate in that precinct is 20 going to drop by at least 5 points; is that 21 correct? 22 ATTORNEY McKNIGHT: Objection; form. 23 THE WITNESS: And again, that's going 24 to depend when you're talking about a 12-county 25 demonstration area. Just as you can't assume</p> <p style="text-align: right;">201</p>	<p>1 Figure Number 1 on page 6 of his rebuttal 2 report? 3 A. Yes. 4 Q. Okay. And this is a reproduction of your 5 scatterplot Figure 2, but each dot is weighted 6 based on the population of the precinct it 7 represents, correct? 8 A. Correct. 9 Q. And Dr. Collingwood turned over the code and 10 backup materials for this figure, correct? 11 A. I don't know. 12 Q. Okay. So you didn't review those? 13 A. No. 14 Q. Sitting here today, can you identify any errors 15 in Rebuttal Figure 1? 16 A. No. 17 Q. Did you review Dr. Collingwood's Rebuttal 18 Table 1 on page 7? 19 A. Yes. 20 Q. And this is a table that looks at how the four 21 precincts with BVAP between 37 to 40 percent in 22 the demonstration area performed in the 2020 23 governor and presidential contests, correct? 24 A. Correct. 25 Q. Sitting here today, can you identify any errors</p> <p style="text-align: right;">203</p>
<p>1 that you can draw a district that looks like a 2 precinct, you can't assume that when you're 3 drawing a district that everything that you draw 4 is going to look like a random sample of a 5 12-county area, so within the 12-county area 6 there are variations. You're using sub 7 geography. 8 This would be roughly correct if you 9 were trying to draw a district that basically 10 contained those 12 counties, but you're not. 11 You're trying to draw two districts that are 12 less than the 12 counties so both individually 13 and collectively. So as you said, it's hard to 14 say what's going to happen when you start 15 putting precincts together. It's not the case 16 that the multiple precincts within this 17 12-county area are all either 21 percent average 18 or 11 percent average, a lot of variations. 19 ATTORNEY THEODORE: Okay. I'm going to 20 drop Dr. Collingwood's rebuttal report into the 21 chat, and I'm going to mark that as Exhibit 7. 22 (WHEREUPON, Plaintiff's Exhibit 7 was 23 marked for identification.) 24 BY ATTORNEY THEODORE: 25 Q. Have you reviewed Dr. Collingwood's Rebuttal</p> <p style="text-align: right;">202</p>	<p>1 in Rebuttal Table 1? 2 A. No. 3 Q. All right. Let's turn to Dr. Collingwood's 4 analysis of this issue in his initial report. 5 You -- and this is -- well, you 6 understand that Dr. Collingwood conducted an 7 analysis included that across all the 2020 and 8 2022 statewide contests the counties in the 9 demonstration area would on average elect a 10 black preferred candidate with a BVAP of 11 47.07 percent? 12 A. That's my recollection. 13 Q. All right. And you don't offer -- and the 14 demonstration area as we've discussed refers to 15 the 12 counties that form part of the 16 plaintiffs' various Gingles 1 demonstration 17 districts, correct? 18 A. That is my recollection. Let me make sure I'm 19 not misstating something here. 20 The analysis is the counties in the 21 demonstration area, yes. 22 Q. All right. The demonstration area refers to the 23 12 counties in the northeast region that form 24 part of the plaintiffs' various Gingles 1 25 demonstration districts, correct?</p> <p style="text-align: right;">204</p>

<p>1 A. That's correct.</p> <p>2 Q. And you don't offer any opinion in your report</p> <p>3 criticizing Dr. Collingwood's decision to</p> <p>4 conduct his analysis of the BVAP needed to elect</p> <p>5 a black preferred candidate for this case by</p> <p>6 analyzing those counties, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. All right. You say in your report on page 15,</p> <p>9 "As he notes," and you're referring to</p> <p>10 Dr. Collingwood, "a BVAP of 47.07 percent is the</p> <p>11 mean for black preferred candidate success."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So you agree that a BVAP of 47.07 percent</p> <p>15 is the BVAP that would be required in the</p> <p>16 demonstration area for a black preferred</p> <p>17 candidate to narrowly win the average election;</p> <p>18 is that correct?</p> <p>19 A. I'm not sure I would go quite that far, no.</p> <p>20 Q. What did you mean when you stated "As he notes a</p> <p>21 BVAP of 47.07 percent is the mean for black</p> <p>22 preferred candidate success"?</p> <p>23 A. Well, again, as he's majoring this which is</p> <p>24 fairly indirectly through using EI estimates and</p> <p>25 applying them to BVAPs and so forth, so given</p> <p style="text-align: right;">205</p>	<p>1 A. Well, that's -- I mean, I mentioned about the</p> <p>2 bar charts, and I talk about what the</p> <p>3 scatterplot show. I'm not endorsing</p> <p>4 the -- although the 47 percent is below</p> <p>5 50 percent, so certainly he's conceding that</p> <p>6 this will work below 50 percent, but I think the</p> <p>7 substance of what I'm saying in my report that</p> <p>8 we've got a lot of bars here and the bars below</p> <p>9 that 40 percent line represent districts that</p> <p>10 perform presumably.</p> <p>11 And again, I mean, I wasn't criticizing</p> <p>12 it for being theoretical as opposed to actually</p> <p>13 creating a district. I'm not the one that</p> <p>14 believes that you need to create a district.</p> <p>15 Apparently, that's something he believes, which</p> <p>16 he didn't do.</p> <p>17 Q. I'm sorry. Can you repeat what you just said.</p> <p>18 A. I said I'm not saying that he not necessarily</p> <p>19 had to create a district to demonstrate this</p> <p>20 which he didn't do, but he seems to be critical</p> <p>21 of me for not creating a district to demonstrate</p> <p>22 what I was saying. So maybe it is important to</p> <p>23 create a district, but he hasn't done that.</p> <p>24 So again, I'm not particularly critical</p> <p>25 of this analysis. I think the bar chart makes</p> <p style="text-align: right;">207</p>
<p>1 all that methodology that's what he shows as the</p> <p>2 mean needed to reach 50 percent plus 1.</p> <p>3 When you're evaluating districts,</p> <p>4 you -- for example, you would -- an</p> <p>5 opportunity-to-elect district is not a district</p> <p>6 where you basically have a majority in all the</p> <p>7 elections. It's a district where you could</p> <p>8 expect to win more than half of the elections,</p> <p>9 so we're not sure that these are equal</p> <p>10 opportunity districts. I'm not sure that</p> <p>11 they're actual districts.</p> <p>12 So I'm not entirely sure how this</p> <p>13 directly connects to district formation any more</p> <p>14 than the scatterplots connect directly to</p> <p>15 district formation, but I do see that in</p> <p>16 the -- in this bar chart that there are</p> <p>17 substantial -- substantial number of districts</p> <p>18 below that that seem to be performing.</p> <p>19 So I'm not sure exactly what to make of</p> <p>20 the mean -- when you're trying to translate the</p> <p>21 mean back into saying that you'd have to have a</p> <p>22 district that was above 47 percent to perform,</p> <p>23 this doesn't demonstrate that.</p> <p>24 Q. You don't offer any of the opinions you just</p> <p>25 stated in your report, do you?</p> <p style="text-align: right;">206</p>	<p>1 clear that what he's showing is that whatever</p> <p>2 the mean is, it's below 50 percent and that</p> <p>3 there are things that fall well below</p> <p>4 50 percent. And I think that's the same point I</p> <p>5 was making with my scatterplot which is just a</p> <p>6 reproduction or an update of Dr. Barreto's</p> <p>7 scatterplot, so I think we're all on the same</p> <p>8 page here.</p> <p>9 Q. Well, your scatterplot doesn't speak to a</p> <p>10 district's BVAP percentage, correct? It just</p> <p>11 speaks to a district's BVAP percentage?</p> <p>12 A. It speaks to the issue, as did Dr. Barreto's,</p> <p>13 about are there precincts in which this is</p> <p>14 taking place and therefore can we believe --</p> <p>15 sort of as a matter of reality, could we believe</p> <p>16 something, for example, is abstract as</p> <p>17 Dr. Collingwood's analysis, and I think the</p> <p>18 answer is we can.</p> <p>19 How is it that we have successful</p> <p>20 districts well below the 47 line, and the answer</p> <p>21 is it's not unrealistic because we know that in</p> <p>22 a non-arbitrary geography like precincts we see</p> <p>23 that as well. Again, neither of us drawing</p> <p>24 districts here, but I think we're drawing the</p> <p>25 same conclusion.</p> <p style="text-align: right;">208</p>



<p>1 Q. You haven't criticized -- you haven't offered 2 any criticism of the method that Dr. Collingwood 3 used to reach the conclusion that 47.07 percent 4 is the BVAP percentage where these counties 5 would on average elect a black preferred 6 candidate, correct?</p> <p>7 A. I think it's a little abstract, but I'm not 8 criticizing. I don't think he did it 9 incorrectly. Again, I can't verify it, but I 10 wasn't concerned enough about it to want to 11 replicate it because I don't disagree with what 12 his Figure 13 shows. And I think another way of 13 looking at that, at least the judge mentioned as 14 being useful was the scatterplot. In turn, 15 Dr. Collingwood says my scatterplot doesn't show 16 anything because I should have drawn a district 17 to show what the minimum level was, but -- and 18 so, yeah, I didn't criticize him for not drawing 19 a district, but if he thinks it's critical to 20 draw a district, he should have drawn one.</p> <p>21 Q. He should have drawn a district to show what?</p> <p>22 A. Well, he said I would have to draw a district to 23 show that it was possible to elect at whatever 24 level, that there's no way to do that without 25 actually drawing a district, and then he turns</p> <p style="text-align: right;">209</p>	<p>1 exhaustive senate district to find out what was 2 possible here. I don't think he should be 3 required to do that. I certainly didn't think I 4 was required to do it. I'm not trying to 5 disprove what Dr. Collingwood says. I'm 6 supporting what Dr. Collingwood says. I'm 7 supporting his Figure 13.</p> <p>8 BY ATTORNEY THEODORE:</p> <p>9 Q. Okay. And you haven't offered any competing 10 methodology for determining the BVAP at which a 11 senate district in a demonstration area or some 12 other area could elect a black preferred 13 candidate, correct?</p> <p>14 ATTORNEY McKNIGHT: Objection; form.</p> <p>15 THE WITNESS: Correct. Again, I'm not 16 disputing that you can draw an effective 17 district at below 50 percent. I'm agreeing with 18 Dr. Collingwood on that.</p> <p>19 I don't think that in order to make 20 that point you need to do more necessarily than 21 what Dr. Collingwood did, but if Dr. Collingwood 22 is correct in his rebuttal insistence that you 23 can't say that that's true that a district could 24 elect at 37 percent until you drew one, then I 25 must confess I'm confused as to how he can say</p> <p style="text-align: right;">211</p>
<p>1 around and says he's got the level here and he 2 didn't draw a district.</p> <p>3 So again, I'm not saying you have to do 4 that. I'm just saying, you know, fair is fair. 5 If he thinks that is a critical issue, that 6 someone, in order to testify about what's 7 possible, needs to actually draw that district, 8 then he needs to actually draw that district.</p> <p>9 Q. Dr. Alford, you did no work to determine the 10 BVAP percentage at which a senate district in 11 the demonstration area could elect a black 12 preferred candidate, correct?</p> <p>13 ATTORNEY McKNIGHT: Objection; form.</p> <p>14 THE WITNESS: Again, the scatterplot, 15 which is something taken from Dr. Barreto's 16 report, is relevant to that and that's what I 17 did. I updated that, put it in the right 18 counties to show that it confirms what Figure 13 19 in Dr. Collingwood's report shows.</p> <p>20 I did not say that Dr. Collingwood was 21 defective for not producing a district, but in 22 response to what I said, which I think 23 reenforces his analysis, he seemed to take 24 exception to that and believe that what I should 25 have done, which he didn't do, was draw some</p> <p style="text-align: right;">210</p>	<p>1 it will work at 47 percent when he hasn't drawn 2 one, nor has he drawn one to see if he could do 3 it at 46 or 42 or 40. So I suspect he's giving 4 us an upper bound here. He's certainly not 5 testing a lower bound.</p> <p>6 I wasn't intending by any sense to say 7 the upper bound was true at 37 percent, just to 8 point out that the precinct level results are 9 completely consistent with the notion that you 10 can create a district that would elect a 11 minority candidate of choice, a Democrat, at 12 below 50 percent and according to his analysis 13 at below 47 percent, but neither of us have 14 drawn a district.</p> <p>15 BY ATTORNEY THEODORE:</p> <p>16 Q. When you were using the term upper bound and 17 lower bound in your answer, can you explain what 18 you mean by that?</p> <p>19 A. Well, if we were trying to explore sort what is 20 the -- how -- sort of what the -- what the range 21 of possible performing districts are, then we 22 would -- you know, we would need to understand 23 sort of where that might occur.</p> <p>24 So by my pointing out that the lines 25 cross at 50 percent, somewhere between in the</p> <p style="text-align: right;">212</p>



<p>1 high 30s, I'm not suggesting -- I mean, in some  2 sense that becomes a technical lower bound, but  3 I'm not suggesting that that means that you  4 could necessarily draw a district at that point,  5 but certainly it explains why you can draw a  6 district somewhere above that point, and  7 Dr. Collingwood's analysis suggests you can draw  8 districts below 50 percent and below 47 percent.  9 So somewhere in that range between 37 percent  10 and 47 percent there are going to be apparently  11 effective districts.</p> <p>12 But if the question is whether someone  13 has drawn that district, I don't know whether  14 Dr. Collingwood has drawn it, but he didn't  15 include it in his rebuttal or his report. I  16 haven't drawn it.</p> <p>17 Q. All right. And if you turn to Figure 13 in  18 Dr. Collingwood's report, it shows that there  19 are six elections in which you need more than  20 51 percent BVAP to achieve a narrow 50 plus 1  21 victory; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. All right. In your report, you state on  24 page 15:  25 "Based on his Figure 13, it</p> <p style="text-align: right;">213</p>	<p>1 Hispanic turnout or Anglo and Asian turnout, the  2 gap is much narrower for Anglo and black  3 turnout. I think black turnout may still lag a  4 bit behind white turnout, but in models where  5 you take, you know, multi variable models of  6 turnout of black, white, it's not a particularly  7 influential predictor any more. Historically,  8 that had been dramatically true, but that gap  9 has been shrinking over time, so I don't know  10 where it is now in North Carolina.</p> <p>11 BY ATTORNEY THEODORE:</p> <p>12 Q. All right. Can you pull up your Exhibit 6 -- or  13 the exhibit that I marked as Exhibit 6. That's  14 your affidavit from the Ramapo case. Would you  15 pull up page 6 of that, paragraph 24.</p> <p>16 You see there, the last sentence:  17 "Typically, black and Latino  18 populations have significantly lower  19 turnout than white voters."</p> <p>20 A. Yes.</p> <p>21 Q. I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. That was a pretty recent report, correct?</p> <p>24 A. That was -- yeah, that was fairly recent report,  25 yes.</p> <p style="text-align: right;">215</p>
<p>1 appears that 22 out of 29 of the  2 2020 to 2022 contests he analyzed  3 would result in the election of  4 black preferred candidates of below  5 50 percent black BVAP."</p> <p>6 Do you see that on page 15?</p> <p>7 A. We're back at my report at page 15.</p> <p>8 Q. Correct.</p> <p>9 A. Yes.</p> <p>10 Q. All right. Did you mean 20 out of 27 there?</p> <p>11 A. Well, let me see.</p> <p>12 Yes. Either 20 or 21 would be correct.</p> <p>13 Q. Because there's only 27 elections in 2020 and  14 2022, correct?</p> <p>15 A. Correct. So 27 total, and either 20 or 21 of  16 them are below 50 percent.</p> <p>17 Q. Do you agree that black voters have  18 significantly lower turnout rate than white  19 voters?</p> <p>20 ATTORNEY McKNIGHT: Objection; form.</p> <p>21 THE WITNESS: That varies substantially  22 according to geography. I haven't studied  23 turnout in North Carolina so I couldn't speak to  24 that, but more broadly, while there's a very  25 substantial gap, for example, in Anglo and</p> <p style="text-align: right;">214</p>	<p>1 Q. All right. So you still agree today with what  2 you said there, that typically black populations  3 have significantly lower turnout than white  4 voters?</p> <p>5 A. It certainly was true in that area. Again, I  6 don't know what the situation is in  7 North Carolina, but I would not make the  8 assumption that -- simply make the assumption  9 that the turnout of blacks, whites, and  10 Hispanics were equal in any population. You'd  11 be better off actually analyzing.</p> <p>12 Q. And that's something you need to take into  13 account when determining the level -- the black  14 BVAP level that you would need to elect a black  15 preferred candidate, correct?</p> <p>16 A. No. No, I don't believe so.</p> <p>17 Q. Why not?</p> <p>18 A. I mean, certainly -- that may be one of the  19 things you want to take into account, but if a  20 district is drawn to create as an  21 equal-opportunity-to-elect district and there's  22 not some mechanism that's making it difficult  23 for blacks to register or to vote, then  24 presumably part of the reason -- as I understand  25 at least, part of the reason to create a</p> <p style="text-align: right;">216</p>

<p>1 single-member district is that if you create a</p> <p>2 single-member district where blacks constitute a</p> <p>3 majority and therefore if they register, turnout</p> <p>4 and vote and control the district, then they</p> <p>5 have the opportunity to do that and they might</p> <p>6 well do so. There's certainly literature that</p> <p>7 suggests that minority participation can be in</p> <p>8 some circumstances increased by drawing</p> <p>9 minority-majority districts which is part of the</p> <p>10 reason for doing it.</p> <p>11 The question is what turnout would be</p> <p>12 in a district where minorities have the</p> <p>13 opportunity to elect without -- could not be</p> <p>14 blocked by majority voters, and if in that</p> <p>15 district the opportunity to turnout is not some</p> <p>16 disadvantage where either registration or</p> <p>17 turnout itself is discriminatory, then the</p> <p>18 district setting provides an opportunity, but</p> <p>19 that opportunity requires a turnout the vote.</p> <p>20 And that's from an opportunity</p> <p>21 perspective. If you want to talk about if</p> <p>22 everything stays the same will the district</p> <p>23 perform, then you're going to have to look at</p> <p>24 turnout, but the old rule of thumb for building</p> <p>25 turnout into districts is not -- to my knowledge</p> <p style="text-align: right;">217</p>	<p>1 case conducted an analysis of the BVAP</p> <p>2 percentage needed for a black preferred</p> <p>3 candidate to win in a hypothetical district that</p> <p>4 hasn't yet been drawn?</p> <p>5 A. Too many cases, too much time. I have no idea</p> <p>6 whether -- I'm certain that issues related to</p> <p>7 that must have come up in the old days and</p> <p>8 particularly in Section 5 where issues like that</p> <p>9 were central to a retrogression.</p> <p>10 I'd say in the current cycle where</p> <p>11 retrogression is no longer a standard, I don't</p> <p>12 recall having done that.</p> <p>13 Q. You've relied on citizen voting age population</p> <p>14 data from the Census Bureau American Community</p> <p>15 Survey in your work as an expert in voting</p> <p>16 rights cases, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And I can call that ACS CVAP data and you'll</p> <p>19 understand what I mean?</p> <p>20 A. Yes.</p> <p>21 Q. What are the cases in which you have relied on</p> <p>22 ACS CVAP data?</p> <p>23 A. I would say --</p> <p>24 Q. And you can feel free to refer to your c.v.</p> <p>25 A. I would just say sort of -- if I can kind of</p> <p style="text-align: right;">219</p>
<p>1 not practiced widely any longer.</p> <p>2 Q. Your report does not contain any criticism of</p> <p>3 Dr. Collingwood's decision to factor turnout</p> <p>4 into the analysis that he conducted of the black</p> <p>5 BVAP percentage at which these counties would on</p> <p>6 average narrowly achieve a 50 percent plus 1</p> <p>7 victory for a black preferred candidate; is that</p> <p>8 correct?</p> <p>9 ATTORNEY McKNIGHT: Objection; form.</p> <p>10 THE WITNESS: That's correct.</p> <p>11 BY ATTORNEY THEODORE:</p> <p>12 Q. Okay. And you're not planning to criticize</p> <p>13 Dr. Collingwood for incorporating turnout into</p> <p>14 that analysis; is that correct?</p> <p>15 ATTORNEY McKNIGHT: Objection; form.</p> <p>16 THE WITNESS: I'm not planning to.</p> <p>17 BY ATTORNEY THEODORE:</p> <p>18 Q. Well, you didn't disclose such an opinion in</p> <p>19 your report, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you haven't conducted an analysis without</p> <p>22 incorporation of turnout that would produce</p> <p>23 different results, correct?</p> <p>24 A. Correct.</p> <p>25 Q. All right. Have you ever yourself in a prior</p> <p style="text-align: right;">218</p>	<p>1 classify.</p> <p>2 So cases that involved -- that took</p> <p>3 place in states where there's voting</p> <p>4 registration by race, then in terms of doing</p> <p>5 Gingles 2 and 3 analysis, I would have been</p> <p>6 using the proportion of the voting -- actual</p> <p>7 voters that were black or Hispanic and not use</p> <p>8 CVAP.</p> <p>9 In states like Texas where you don't</p> <p>10 have that, then I would have been -- for an</p> <p>11 Hispanic case, I would have used Spanish surname</p> <p>12 analysis of the voter rolls, for a black case I</p> <p>13 would have used maybe BVAP but also possibly</p> <p>14 CVAP.</p> <p>15 If I was drawing a district and</p> <p>16 concerned about whether it was majority-minority</p> <p>17 or not, I would use CVAP for any type of</p> <p>18 district.</p> <p>19 So I would say in some -- if a case</p> <p>20 involves -- if a case involves black voters in a</p> <p>21 state where voter registration is not by race, I</p> <p>22 wouldn't -- for the most part, I think</p> <p>23 historically would not have much cared whether</p> <p>24 that was using BVAP or CVAP because BVAP tends</p> <p>25 not to vary that much from CVAP.</p> <p style="text-align: right;">220</p>

<p>1 Where there's a substantial Hispanic 2 population, you know, BVAP will tend to 3 underreport black concentration relative to CVAP 4 so it might matter somewhat there.</p> <p>5 There are advantages of using HVAP or 6 BVAP. There are advantages to using black CVAP 7 or black or Hispanic CVAP, but I've used both, 8 and I don't think you can say that one is always 9 superior to the other, but there are certainly 10 situations in which CVAP is probably closer to 11 what you're looking for and other cases where it 12 doesn't matter.</p> <p>13 Q. You said you used CVAP when you're drawing a 14 demonstration district for Gingles 1; is that 15 correct?</p> <p>16 A. Yes, that's correct.</p> <p>17 Q. And can you identify the cases in which you have 18 relied on CVAP?</p> <p>19 A. So I would have used CVAP in my Gingles 2 and 3 20 analysis, probably in some of the Texas cases, 21 possibly elsewhere, but I primarily rely on CVAP 22 for the Gingles 1 inquiry, and then the recent 23 cases I've largely stopped doing demographic 24 work or GIS work and focused on 2 and 3.</p> <p>25 So certainly I would look at CVAP if I</p> <p style="text-align: right;">221</p>	<p>1 you've got to be careful about it.</p> <p>2 Q. Do you regard the ACS five-year CVAP population 3 as a reliable source of information for 4 identifying that proportion of CVAP in a 5 particular region that is black?</p> <p>6 ATTORNEY McKNIGHT: Objection; form.</p> <p>7 THE WITNESS: So again, I mostly would 8 consult CVAP for a Hispanic district because 9 there are large differences in citizenship 10 across areas of Hispanic population varies 11 dramatically by geography.</p> <p>12 You have to evaluate that in a 13 particular circumstance that you're using it in. 14 It is a statistical estimate. It has -- you 15 know, you can -- it comes with and you can 16 calculate the confidence intervals around it. I 17 would certainly pay attention to the confidence 18 interval.</p> <p>19 It's not, you know, the full count 20 information that you get in BVAP or HVAP. So 21 it's a survey, but, you know, we do lots of work 22 with surveys. As long as you're careful about 23 the confidence intervals, but I'll confine this 24 to what we're talking about here.</p> <p>25 With regard to BVAP, I think the main</p> <p style="text-align: right;">223</p>
<p>1 was drawing districts for a jurisdiction. The 2 issue of CVAP came up regarding -- most recently 3 regarding the demonstration district in the 4 Spring Branch ISD case that I just testified in. 5 The question there was about whether the error 6 rate in CVAP was -- made it difficult to say 7 whether a district was -- had a CVAP majority or 8 not and then that turned into other issues about 9 proportions -- proportion of voters in the 10 district, but I wasn't the demographer for the 11 case. I was just commenting in on that CVAP 12 percentage of whether it meant that there was 13 clearly a Hispanic voter majority in the 14 demonstration district.</p> <p>15 I suspect CVAP would have been involved 16 in the Miami case, but I was not -- lots of 17 discussion there about exact percentage black in 18 the black city council district there, but once 19 again, I was not the demographer.</p> <p>20 So I would say cases in this decade, 21 I'm not really the one who's really producing or 22 consuming CVAP, but I don't know what else to 23 tell you. There are good things and bad things 24 with CVAP. There are particular kinds of 25 analysis where it's useful and others where</p> <p style="text-align: right;">222</p>	<p>1 issue is you've got to deal with the sampling 2 variability.</p> <p>3 BY ATTORNEY THEODORE:</p> <p>4 Q. When you've relied on the ACS five-year survey 5 CVAP calculations in your past expert work to 6 estimate the minority CVAP population in a 7 district or a demonstration district, have you 8 provided confidence intervals or margins of 9 error with those black CVAP percentage 10 estimates?</p> <p>11 A. We're talking about a case which I'm the person 12 drawing the demonstration district, that's going 13 back a long way. I'm not even sure what case 14 that would be.</p> <p>15 That issue has come up in cases I've 16 been involved in, came up in several of the 17 local redistricting cases a decade ago. It came 18 up again, as I said, in the Spring Branch 19 Independent School District case. And the 20 dispute was about -- precisely about what you 21 could conclude given that the confidence 22 interval stretch below 50 percent.</p> <p>23 So I'm aware of that. It's a 24 controversy that's been -- it's been a 25 controversy that's been aired in cases that I've</p> <p style="text-align: right;">224</p>

<p>1        been involved in, but it sort of -- I'm not sure  2        how far back I would have to go to get to a case  3        where the issue turned on the ability to draw a  4        narrow 50 percent majority district. I was the  5        demographer, and I was using CVAP. That may be  6        an empty set for all I know.</p> <p>7        Q. What opinion did you express about this issue in  8        the Spring Branch case?</p> <p>9        A. The issue that because the confidence interval  10       included -- I think something more than  11       25 percent of the confidence interval was  12       estimates below 50 percent that that it was  13       possible that the district was in fact not a  14       majority CVAP Hispanic district and that all of  15       the election data showed that within the area  16       that the district had been drawn, the voter  17       turnout never exceeded 21 percent Spanish  18       surname.</p> <p>19       So the fact that there was some  20       question about whether the district was a CVAP  21       majority or not was certainly -- there was no  22       question that there was not a -- that the voter  23       turnout in that area of that district was going  24       to be -- would be something in excess of  25       75 percent non-Hispanic, and there also was no</p> <p style="text-align: right;">225</p>	<p>1        that the confidence interval on the CVAP  2        estimate included the possibility that the CVAP  3        proportion was below 50 percent as well.</p> <p>4        Q. Is the CVAP point estimate the most likely  5        number for the actual CVAP percentage in a  6        particular district?</p> <p>7        A. So, yes, in a way that's different from the  8        point estimate in the EI analysis. Because  9        we're talking about sample variability here, the  10       sampling distribution we assume is reasonably  11       well behaved, meaning that the center point that  12       the estimate around which we're constructing the  13       confidence interval, the confidence interval  14       will be symmetric and will center on that point,  15       and that means that that point estimate is the  16       most likely value.</p> <p>17       So that characteristic -- so if that's  18       all you care about is the most likely value,  19       you're done. If you want to ask the social  20       science question which is -- the social science  21       question would be I've drawn this district, I  22       think it's a majority district, what do you  23       think, then the way we would test that is social  24       scientists using the information we get from the  25       Census Bureau and the ACS survey. We would say,</p> <p style="text-align: right;">227</p>
<p>1        evidence to suggest that there was even a  2        registered vote majority Hispanic, so...</p> <p>3        Q. Was your opinion in the Spring Branch case about  4        Gingles -- CVAP use in Gingles 1 or CVAP use in  5        Gingles 2 and 3?</p> <p>6        A. We weren't using CVAP for Gingles 2 and 3. It  7        was a Hispanic case where we were using a  8        Spanish surname voter analysis.</p> <p>9        CVAP was only an issue in Gingles 1.  10       And again, I wasn't the one doing the  11       demonstration district. I was just asked to  12       comment on that because when we looked at the  13       proportion of voters Hispanic, it wasn't  14       apparent that there was any particular  15       concentration in the area where the district was  16       drawn.</p> <p>17       The two voting precincts that were used  18       to create the demonstration district both  19       typically had less than 20 percent of the voters  20       Hispanic. Again, that's the input into my EI  21       analysis for Gingles 2 and 3 so I was aware that  22       the voting precincts that were used to create  23       the demonstration district had typically been  24       less than 20 percent Hispanic and turned out  25       vote, and that basically buttressed the fact</p> <p style="text-align: right;">226</p>	<p>1        okay, so the null hypothesis is that the  2        district is not majority and then we would ask  3        whether we can reject that null hypothesis, and  4        we would reject the null hypothesis based on the  5        5 percent outer band of a 95 percent confidence  6        interval.</p> <p>7        So in the case of the Spring Branch  8        case where I think 25 percent of the -- there  9        was a 25 percent probability that the actual  10       value -- not the sample value, the actual value  11       was below 50 percent, in the social science  12       sense we would say that CVAP 52 percent is  13       insufficient to conclude that the district is  14       not in fact a non-majority district.</p> <p>15       If you're just going to say, look, all  16       that matters is central tendency because that's  17       the single most likely point, then what do you  18       care about the confidence interval.</p> <p>19       The point of the confidence interval is  20       there's a are very real probability and  21       sometimes a very substantial probability that  22       your conclusion that this is a majority district  23       is wrong, and that's what is -- all we're trying  24       to do that and all we do when we do confidence  25       testing is we don't report a conclusion --</p> <p style="text-align: right;">228</p>

<p>1 regardless of what the mean is or the point 2 estimate is, we don't report that as a 3 conclusion if we can't substantiate that by 4 saying it's statistically significant with 5 regard to a particular null hypothesis, or if we 6 do report it, we say this is what we -- this is 7 at least an interesting possible finding, but we 8 can't within normal standards of social science 9 accuracy, we can't reject the hypothesis that in 10 fact the opposite is true.</p> <p>11 So again, this is no different than, 12 you know, a poll in Georgia that shows that 13 Trump has 49 percent and Kamala Harris has 14 48 percent confidence interval. You know, it's 15 3 and a half percent, then the question is are 16 we sure that one of those candidates -- do we 17 know which candidate is ahead in Georgia, and 18 the answer is we don't know which candidate is 19 ahead in Georgia.</p> <p>20 Q. Would you agree that confidence intervals that 21 accompany the ACS five-year survey CVAP data, 22 those are reported by ACS as plus or minus the 23 same number, correct?</p> <p>24 A. Yes. They're sampling -- they're based on 25 sampling theory so they are symmetric around the</p> <p style="text-align: right;">229</p>	<p>1 the tools for computing that yourself, but 2 again, all of that is based on the parameters 3 they've established, and I simply accept that.</p> <p>4 Q. All right. And it's true that if you have a 5 CVAP point estimate for the percentage of a 6 black CVAP or any other CVAP in the CVAP 7 population, you can assume that 50 percent of 8 the expected values will fall higher than that 9 point estimate and 50 percent will fall lower 10 because the margin of error is based around a 11 normal distribution. Is that true?</p> <p>12 A. That's true.</p> <p>13 Q. Okay. And does that mean mathematically that if 14 a -- you have a CVAP point estimate that's above 15 50 percent, it is more likely than not that the 16 actual value is above 50 percent?</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 A. But that's not anybody's test of statistical 20 significance, but you're correct. You at least 21 have the advantage of knowing that the area 22 above the point estimate is 50 percent of the 23 distribution and then whatever part of it lies 24 between the estimate and exactly 50 percent is 25 also above 50 percent and together, so any</p> <p style="text-align: right;">231</p>
<p>1 center point of the distribution and pulling the 2 point estimate. Confidence intervals are not 3 symmetric, but true traditional confidence 4 intervals are symmetric.</p> <p>5 Q. Right. And the Census Bureau ACS confidence 6 intervals assume a normal distribution; is that 7 correct?</p> <p>8 A. Typically, sampling distributions assume a 9 normal distribution. I am not -- I trust the 10 Census Bureau and the folks at ACS who are 11 regularly engaged in one of the largest survey 12 samples in the world to figure out what the 13 appropriate -- but it's not a pure random sample 14 of the population. There's a whole bunch of 15 clustering and things going on in there, so it's 16 complicated, and I trust them to do whatever 17 they do correctly, and I accept their confidence 18 intervals at face value.</p> <p>19 Q. And it's --</p> <p>20 A. For my -- one of the tools to compute your own 21 confidence interval when you're doing something 22 other than using something they actually report, 23 like the population parameters for a city of 24 50,000 people. When you're trying to do that 25 for a precinct, there's a way -- they provide</p> <p style="text-align: right;">230</p>	<p>1 estimate that's above -- bigger than exactly 2 50 percent will have slightly or perhaps 3 profoundly more likely to be above 50 percent 4 than below it.</p> <p>5 But again, that would -- that's sort of 6 the equivalent of kind of a 50 percent 7 confidence interval or something where one tail 8 50 percent confidence interval, we don't use 9 that in the social sciences, we use 95 percent 10 confidence interval.</p> <p>11 ATTORNEY THEODORE: Okay. I am going 12 to transmit another exhibit. I am going to mark 13 this as Exhibit 8.</p> <p>14 (WHEREUPON, Plaintiff's Exhibit 8 was 15 marked for identification.)</p> <p>16 BY ATTORNEY THEODORE:</p> <p>17 Q. Dr. Alford, do you recognize this as a report 18 you filed in the Johnson versus Wisconsin 19 Elections Commission case?</p> <p>20 A. It looks like it has my name on it. I have a 21 vague recollection of doing something for 22 Wisconsin.</p> <p>23 Q. This is a -- you say on page -- the first 24 substantive page of the report, you say you were 25 retained by the Wisconsin legislature to provide</p> <p style="text-align: right;">232</p>

<p>1 VRA analysis; is that right?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And let's scroll down.</p> <p>4 Well, you were expressing an opinion in</p> <p>5 this case that the Wisconsin legislature's plan</p> <p>6 complied with the VRA; is that correct?</p> <p>7 A. I would have to look at the report, but I think</p> <p>8 it was filed on behalf of the legislature. I</p> <p>9 guess that was probably true.</p> <p>10 Q. And let's go to page 12 of the report. And</p> <p>11 you're conducting an analysis here comparing the</p> <p>12 percentage of black elected officials in various</p> <p>13 regions of the state to the black CVAP</p> <p>14 percentage from the ACS for various regions of</p> <p>15 the state. Is that true?</p> <p>16 A. I'm sorry. What page?</p> <p>17 Q. It's paragraphs 34 and 35 on page 12.</p> <p>18 A. Yes. I'm sorry. I skipped ahead. I was</p> <p>19 looking for a table.</p> <p>20 Q. Okay. And you're presenting an opinion, for</p> <p>21 example, that the number of black officeholders</p> <p>22 in Milwaukee County is almost exactly</p> <p>23 proportional to the black CVAP percentage in</p> <p>24 Milwaukee County; is that correct? That's in</p> <p>25 paragraph 34.</p> <p style="text-align: right;">233</p>	<p>1 Q. And in that paragraph you also don't present any</p> <p>2 confidence intervals or margins of error before</p> <p>3 relying on these ACS CVAP figures, correct?</p> <p>4 A. That's correct. So this is a setting where that</p> <p>5 would be something that was important.</p> <p>6 Q. Okay. But you believe that you could draw</p> <p>7 conclusions about the ACS CVAP data being almost</p> <p>8 exactly proportional even without computing</p> <p>9 margins of error, correct?</p> <p>10 A. Again, if there was an issue about whether the</p> <p>11 CVAP percentages are above or below a particular</p> <p>12 point, if there was some -- we were testing</p> <p>13 something here like a Gingles 1 district, that</p> <p>14 would certainly be important, but all I'm</p> <p>15 assessing is the accuracy of the statement</p> <p>16 that's quoted here, the number of black</p> <p>17 officeholders has been far below the number</p> <p>18 proportional to the black population.</p> <p>19 So all you need are the point estimates</p> <p>20 to say that the proportion of black</p> <p>21 officeholders does not appear to be far below</p> <p>22 the proportion of the population.</p> <p>23 Q. Well, you also say that the proportion of black</p> <p>24 officeholders -- that the number of black</p> <p>25 officeholders in Milwaukee County is almost</p> <p style="text-align: right;">235</p>
<p>1 A. Correct.</p> <p>2 Q. And you do that by comparing the 25.9 black CVAP</p> <p>3 percentage to the two out of the eight black</p> <p>4 elected officials or 25 percent of black elected</p> <p>5 officials, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And you don't report any confidence interval in</p> <p>8 this report relating to the black CVAP</p> <p>9 percentage from the ACS; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And you regarded your analysis here as reliable,</p> <p>12 correct?</p> <p>13 A. Yes, absolutely.</p> <p>14 Q. And same thing in paragraph 35, you're arguing</p> <p>15 here that the ACS data shows that black voters</p> <p>16 are 6 percent of the state CVAP; is that</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And then you say that because the six black</p> <p>20 districts in the legislative plan represents</p> <p>21 6.06 percent of the 99 total assembly seats, the</p> <p>22 number of black districts in the state assembly</p> <p>23 is almost exactly proportional to the black</p> <p>24 population; is that correct?</p> <p>25 A. That's correct.</p> <p style="text-align: right;">234</p>	<p>1 exactly proportional to the black CVAP</p> <p>2 population, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And so that's a comparison that requires some</p> <p>5 precision; is that correct?</p> <p>6 ATTORNEY McKNIGHT: Objection; form.</p> <p>7 THE WITNESS: The black population</p> <p>8 appears to be about a quarter, and the black</p> <p>9 officials make up about a quarter of the</p> <p>10 representation.</p> <p>11 Again, we're not -- we're not looking</p> <p>12 at a bright-line test for whether the district</p> <p>13 is 50 percent or not 50 percent. Here we're</p> <p>14 just talking about, again, proportionality is</p> <p>15 not required. The plaintiffs are asserting that</p> <p>16 something is not close to proportionality. I'm</p> <p>17 just showing that with regard to at least a CVAP</p> <p>18 that these things are proportion.</p> <p>19 ATTORNEY THEODORE: All right. I'm</p> <p>20 going to put another exhibit in the chat which</p> <p>21 I'm going to mark as Exhibit 9.</p> <p>22 (WHEREUPON, Plaintiff's Exhibit 9 was</p> <p>23 marked for identification.)</p> <p>24 BY ATTORNEY THEODORE:</p> <p>25 Q. Do you recognize this exhibit as a copy of your</p> <p style="text-align: right;">236</p>



<p>1 expert report filed in the Soto Palmer case?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And this is a VRA Section 2 case; is that</p> <p>4 right?</p> <p>5 A. That's correct.</p> <p>6 Q. Relating to legislative districts in the state</p> <p>7 of Washington?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And let's turn to page 4 of your report.</p> <p>10 And you opine on page 4 that the first</p> <p>11 Gingles prong seems to be met here because the</p> <p>12 Hispanic CVAP percentage exceeds 50 percent in</p> <p>13 the enacted district and then three alternative</p> <p>14 legislative districts, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And these CVAP numbers are from the 2016 to 2020</p> <p>17 is your tabulation; is that right?</p> <p>18 A. I believe that's correct.</p> <p>19 Q. Okay. And one of the districts you discuss had</p> <p>20 a Hispanic CVAP of 50.2 percent, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And this is a situation where in your view it is</p> <p>23 important to know whether the point estimate is</p> <p>24 above 50 percent, correct?</p> <p>25 A. Yes.</p> <p style="text-align: right;">237</p>	<p>1 fact that CVAP says 50 percent in both the</p> <p>2 current legislative district as enacted and all</p> <p>3 these other reports discuss other forms</p> <p>4 discussed by Professor Collingwood, so we've got</p> <p>5 multiple people drawing districts.</p> <p>6 So in my experience as -- in drawing</p> <p>7 districts, if you've got the drawn form of the</p> <p>8 district and you've got alternative forms of the</p> <p>9 district and no one seems to have struggled</p> <p>10 particularly getting above 50 percent CVAP, then</p> <p>11 there's probably -- if you drew a max CVAP</p> <p>12 district, it's more than likely that you'll be</p> <p>13 able to draw a district at a higher CVAP.</p> <p>14 Nobody seems to be trying to do that,</p> <p>15 but if that was the issue here, then I would</p> <p>16 stand by my conclusion that it seems to be met.</p> <p>17 And if that was in dispute, I would sit down</p> <p>18 with a mapping program and I would draw a</p> <p>19 district that -- including looking at the</p> <p>20 confidence interval, draw a district that</p> <p>21 outside the bounds of the confidence interval</p> <p>22 was a CVAP Hispanic majority.</p> <p>23 And again, I'm assuming that the fact</p> <p>24 that it's been drawn that way by multiple</p> <p>25 different people with multiple different</p> <p style="text-align: right;">239</p>
<p>1 Q. Okay. And you don't discuss the margin of error</p> <p>2 for these estimates in this report, do you?</p> <p>3 A. I do not.</p> <p>4 Q. And you don't suggest in this report that an</p> <p>5 expert in a VRA case needs to report margin of</p> <p>6 error for minority CVAP estimates before relying</p> <p>7 on those estimates from the ACS, do you?</p> <p>8 A. I don't see anything here that says that.</p> <p>9 Q. In fact, you rely on those estimates without</p> <p>10 discussing margin of error at all; is that</p> <p>11 right?</p> <p>12 A. So I'll tell you, I didn't create these</p> <p>13 districts. I'm not the demographer. I didn't</p> <p>14 produce the CVAP analysis.</p> <p>15 So all I'm reporting here is that there</p> <p>16 are apparently multiple ways of drawing a</p> <p>17 district, all of which find the ability to</p> <p>18 create a CVAP majority, including one as high as</p> <p>19 53.6, and the fact that you've got multiple</p> <p>20 demonstrations all of which suggest that you're</p> <p>21 above 50 percent suggests that you can -- again,</p> <p>22 I'm not saying that I've drawn this or that it's</p> <p>23 there.</p> <p>24 I think I'm saying the first Gingles</p> <p>25 prong seems to be met here as evidenced by the</p> <p style="text-align: right;">238</p>	<p>1 purposes and doing it without making it a</p> <p>2 regular district makes this a pretty simple</p> <p>3 thing to do.</p> <p>4 Q. All right. But sitting here today, you can't</p> <p>5 identify any case in which you yourself have</p> <p>6 been a demographer and taken the position that</p> <p>7 CVAP percentages do not satisfy Gingles 1</p> <p>8 without reporting on the margin of error,</p> <p>9 correct?</p> <p>10 ATTORNEY McKNIGHT: Objection; form.</p> <p>11 THE WITNESS: Again, I've been involved</p> <p>12 in cases that I've dealt with this, including</p> <p>13 this last week about this issue in</p> <p>14 Spring Branch, and I know that I was involved in</p> <p>15 another case where I was not the demographer,</p> <p>16 but this was exactly the issue that came up and</p> <p>17 the judge says all the matter is the point</p> <p>18 estimate as a matter of law, so maybe that's</p> <p>19 true as a matter of law, maybe it isn't true as</p> <p>20 a matter of law. I don't know what else I can</p> <p>21 tell you.</p> <p>22 BY ATTORNEY THEODORE:</p> <p>23 Q. Okay. All right. But the bottom line is in</p> <p>24 this particular report, you are analyzing</p> <p>25 Gingles 1, you agree that the Gingles prong</p> <p style="text-align: right;">240</p>

<p>1 seems to be met based on CVAP point estimates</p> <p>2 that do not include a margin of error; is that</p> <p>3 right?</p> <p>4 A. I would say I'm declining to analyze Gingles 1.</p> <p>5 Q. You believe that -- sorry. Go ahead.</p> <p>6 A. The first Gingles prong here seems to be met as</p> <p>7 evidenced by the fact that et cetera, et cetera,</p> <p>8 et cetera, and so I'm going on to Gingles 2 and</p> <p>9 3. I don't think -- I mean, my view was --</p> <p>10 again, I didn't see that -- I didn't see that</p> <p>11 that pattern of evidence across multiple plans</p> <p>12 of CVAP majorities suggested that it would be</p> <p>13 difficult to draw a majority CVAP district, and</p> <p>14 so I'm not -- I did no analysis. I did not draw</p> <p>15 a district. I didn't test any of these other</p> <p>16 things.</p> <p>17 I just -- that looks to me like that's</p> <p>18 not going to be an issue, so I'm declining -- I</p> <p>19 wasn't asked to draw a district or to analyze</p> <p>20 this, and so I'm just basically saying it looks</p> <p>21 as though Gingles Prong 1 is probably met and</p> <p>22 I'm moving on to 2 and 3. I'm not the</p> <p>23 demographer here, and I don't have a plan here.</p> <p>24 Q. Okay. All right. Let's turn -- I want to turn</p> <p>25 back to some of your past testimony.</p> <p style="text-align: right;">241</p>	<p>1 A. Yes.</p> <p>2 Q. What cases are those?</p> <p>3 A. So what would have been Paris v Abbott, the</p> <p>4 court accepted this testimony and declined to</p> <p>5 order the Supreme Court and Court of Appeals of</p> <p>6 Texas to be elected in districts instead of at</p> <p>7 large.</p> <p>8 A sort of variant of this is accepted</p> <p>9 in parts of the -- I hesitate to say which Texas</p> <p>10 decision, but one of the -- maybe the last Texas</p> <p>11 congressional decision where the court wrestled</p> <p>12 with issue authority and both in the sense of</p> <p>13 parties polarization but also in the sense of</p> <p>14 whether voting for the same party amounted to</p> <p>15 cohesion for different racial groups, and so the</p> <p>16 testimony -- my testimony that what was -- what</p> <p>17 we saw was party cohesion and not racial or</p> <p>18 ethnic cohesion was accepted there in some</p> <p>19 parts.</p> <p>20 Q. Any others come to mind?</p> <p>21 A. I don't think so. I think other places where</p> <p>22 this has come up or the courts either go in the</p> <p>23 other direction or it was decided on some other</p> <p>24 basis or hasn't been decided yet.</p> <p>25 Q. What are the cases where the court has -- that</p> <p style="text-align: right;">243</p>
<p>1 ATTORNEY McKNIGHT: Elisabeth, we've</p> <p>2 been going for over an hour. If we're going to</p> <p>3 a new topic --</p> <p>4 ATTORNEY THEODORE: I think I may have</p> <p>5 only five more minutes, but I'm happy to take a</p> <p>6 break.</p> <p>7 (Brief Recess: 4:45 to 4:54 p.m.)</p> <p>8 BY ATTORNEY THEODORE:</p> <p>9 Q. You conducted the analysis that you offer in</p> <p>10 this case arguing that racially polarized voting</p> <p>11 simply reflects partisan polarization in many</p> <p>12 case as an expert witness. Is that fair to say?</p> <p>13 A. Yes.</p> <p>14 Q. And fair to say that a number of courts have</p> <p>15 declined to credit your testimony on that topic?</p> <p>16 A. That would be fair to say. That would be a</p> <p>17 polite way of saying that, yes, I agree.</p> <p>18 Q. All right. Fair to say that a number of courts</p> <p>19 have expressly rejected your testimony on this</p> <p>20 topic?</p> <p>21 A. Yes.</p> <p>22 Q. Can you recall a case in which a court has</p> <p>23 accepted or relied upon this type of analysis by</p> <p>24 you as a reason to deny relief in a Section 2</p> <p>25 case?</p> <p style="text-align: right;">242</p>	<p>1 you recall where the court has rejected this</p> <p>2 sort of argument by you?</p> <p>3 A. So most recently I'd say that would be</p> <p>4 Mississippi, Louisiana, and Georgia.</p> <p>5 Q. And the Mississippi case is the Mississippi</p> <p>6 State Conference of the NAACP versus Board of</p> <p>7 Elections?</p> <p>8 A. If you say so. I'm not -- citations were never</p> <p>9 my thing, even academic citation, much less --</p> <p>10 Q. Fair.</p> <p>11 A. So for a recent big case in Mississippi where</p> <p>12 the court spent a lot of time not agreeing with</p> <p>13 me, that would be the right case.</p> <p>14 Q. And that case -- is it fair to say that the</p> <p>15 analysis you conducted in that case was similar</p> <p>16 to the analysis you've done in this case with</p> <p>17 respect to the issue of, you know, racial versus</p> <p>18 partisan polarization?</p> <p>19 A. Yes.</p> <p>20 Q. Any differences you can think of?</p> <p>21 A. I'm sure there are some minor differences. I'm</p> <p>22 responding to -- there I was responding to, if</p> <p>23 I'm remembering it correctly, Professor Hanley</p> <p>24 rather than Professor Collingwood, they do</p> <p>25 analysis a little bit differently so there may</p> <p style="text-align: right;">244</p>

<p>1 have been some differences, but in terms of the</p> <p>2 broad outline, it's very similar analysis, very</p> <p>3 similar conclusions.</p> <p>4 Q. All right. Fair to say that in the Georgia</p> <p>5 case, the analysis that you did and that the</p> <p>6 court rejected was also similar to the analysis</p> <p>7 that you did here?</p> <p>8 A. That's correct.</p> <p>9 Q. And you mentioned a Louisiana case. Fair to say</p> <p>10 that -- is that the Louisiana versus Ardoin</p> <p>11 case?</p> <p>12 A. There are several Louisiana cases, but that one</p> <p>13 would probably do as good as any. Somewhere</p> <p>14 there was a Louisiana case where the judge did</p> <p>15 not agree with me about partisanship versus</p> <p>16 race.</p> <p>17 Q. In that case, also fair to say the analysis you</p> <p>18 did there was similar to the analysis you are</p> <p>19 doing in this case?</p> <p>20 A. That's correct.</p> <p>21 Q. All right. And in the East Ramapo Central</p> <p>22 School District case, the court also rejected</p> <p>23 your analysis; is that correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And is it fair to say that the -- I'm sorry. Go</p> <p style="text-align: right;">245</p>	<p>1 my analysis which was comported with the</p> <p>2 analysis of the plaintiff's expert they took to</p> <p>3 be either not at all applicable to Section 2</p> <p>4 cases or they sort of understood how it might</p> <p>5 factor into the case in a different way, so they</p> <p>6 may -- like I said, they didn't agree with my</p> <p>7 conclusions, they didn't base their ruling on</p> <p>8 what I view to be reasonable conclusions from</p> <p>9 the -- the most reasonable conclusions from the</p> <p>10 data, but they were not rejecting the analysis</p> <p>11 itself either methodologically or in terms of</p> <p>12 the data it was based.</p> <p>13 Q. Okay. We may have covered this before, but it's</p> <p>14 been a long deposition so I just want to</p> <p>15 make -- ask you again, just to be clear, nothing</p> <p>16 in your analysis speaks to the reason why black</p> <p>17 voters in the relevant areas prefer Democratic</p> <p>18 candidates, correct?</p> <p>19 A. I'm not trying to probe into what underlies that</p> <p>20 preference, but to say nothing speaks to it, you</p> <p>21 have to remember that there are two candidate</p> <p>22 characteristics that are being examined here,</p> <p>23 the race of the candidate and the party of the</p> <p>24 candidate. And so the analysis does speak to</p> <p>25 the question about whether candidate preference</p> <p style="text-align: right;">247</p>
<p>1 ahead.</p> <p>2 A. I was just saying I didn't mention that because</p> <p>3 I wouldn't characterize it as the same kind of</p> <p>4 case or the same kind of analysis. There was a</p> <p>5 lot more -- involved a lot more in dispute in</p> <p>6 Ramapo than would be the case in these others.</p> <p>7 These others are more straightforward cases.</p> <p>8 Q. The others are more straightforward cases?</p> <p>9 A. Yes.</p> <p>10 Q. And I'm going to help you -- I hope you'll thank</p> <p>11 me because I'm going to spare you going through</p> <p>12 those cases.</p> <p>13 A. I'll be happy to go through them, but I would</p> <p>14 also be happy not to go through them.</p> <p>15 I will say -- just so in my view, in</p> <p>16 each of those cases, I don't view my testimony</p> <p>17 to have been -- or my analysis, I will say, to</p> <p>18 have been rejected because my analysis in those</p> <p>19 cases, as here, is essentially the same as the</p> <p>20 analysis from the plaintiff's expert. So my</p> <p>21 view of what that analysis can tell us or can't</p> <p>22 tell us in various ways the different judges</p> <p>23 have declined to make that the basis of their</p> <p>24 ruling, but they -- but not because my analysis</p> <p>25 was incompetent or inappropriate but rather that</p> <p style="text-align: right;">246</p>	<p>1 is centered on the race of the candidate</p> <p>2 comporting or not comporting with the race of</p> <p>3 the voters.</p> <p>4 And so that is a different -- that is a</p> <p>5 factor that is different than the factor of the</p> <p>6 partisan affiliation of the candidate, and so</p> <p>7 the analysis does -- as lots of your questioning</p> <p>8 and lots of Dr. Collingwood's response where</p> <p>9 Dr. Collingwood is going through this is a two</p> <p>10 point difference, he's saying this speaks to the</p> <p>11 issue of race and here's the difference I see on</p> <p>12 race.</p> <p>13 So, yeah, the analysis speaks to the</p> <p>14 issue of race and the issue of party affiliation</p> <p>15 of candidates, and that's -- so it isn't just</p> <p>16 about what's the source of the -- it doesn't</p> <p>17 address the issue of why voters are voting on</p> <p>18 the basis of the party or the candidate rather</p> <p>19 than race, but it does address the issue of</p> <p>20 whether voters are voting on the basis of the</p> <p>21 party or the candidate or the race of the</p> <p>22 candidate.</p> <p>23 ATTORNEY THEODORE: All right. Let me</p> <p>24 just take a five-minute break. It may be that I</p> <p>25 have no more questions, although I probably have</p> <p style="text-align: right;">248</p>

<p>1 a couple more, but I think we'll be done very, 2 very soon. 3 (Brief Recess: 5:05 to 5:08 p.m.) 4 BY ATTORNEY THEODORE: 5 Q. All right. Hopefully, just one more question, 6 which is: Is it fair to say that you have not 7 analyzed the issue of whether black voters 8 prefer Democrats for reasons related to a 9 voter's race? 10 ATTORNEY McKNIGHT: Objection; form. 11 THE WITNESS: Again, I would say that 12 we do have some information about that because 13 we -- if voters -- whether black voters are 14 voting for Democrats because of issues related 15 to race or whether white voters are voting 16 Republicans for issues related to race, we know 17 that those issues don't appear to disturb the 18 voting patterns when the race of the candidate 19 is a prominent signal. 20 So I'm not looking at the origins for 21 why they might favor Democrats or Republicans, 22 but whatever the origins of those to the degree 23 that are racial, they don't display themselves 24 with regard to the variation in the signal of 25 the race or the candidate. So there's</p> <p style="text-align: right;">249</p>	<p>1 degree we're talking about how the race of the 2 voter interacts with the race of the candidate, 3 I've not looked at that issue. 4 BY ATTORNEY THEODORE: 5 Q. And so to the extent that black voters prefer 6 Democrats whether black or white for reasons 7 relating to the race of the voter, your analysis 8 does not analyze that question at all? 9 ATTORNEY McKNIGHT: Objection; form. 10 THE WITNESS: Again, to the -- except 11 to the extent that black voters show no 12 particular preference for white candidates over 13 black candidates. 14 BY ATTORNEY THEODORE: 15 Q. But you can see there may be reasons unrelated 16 to the race of the candidate but related to the 17 race of the voter why black voters prefer 18 Democrats? 19 A. That's possible. 20 Q. Okay. And you haven't done any analysis of 21 whether there are such reasons here? 22 ATTORNEY McKNIGHT: Objection; form. 23 THE WITNESS: Again, the only analysis 24 would be relevant to the issue of race itself as 25 opposed to a policy preference of some sort or</p> <p style="text-align: right;">251</p>
<p>1 information there, but not necessarily about the 2 origins of their -- directly about the origins 3 of their party preference. 4 BY ATTORNEY THEODORE: 5 Q. Right. So you haven't analyzed the issue of 6 whether black voters have a preference for 7 Democrats for reasons that are related to the 8 race of the voter? 9 ATTORNEY McKNIGHT: Objection; form. 10 THE WITNESS: Again, except to the 11 extent that when we say related to the race of 12 the voter that a preference for same race 13 representation are a tendency to vote against 14 people of a particular race on the part of white 15 voters is not evident in the data. 16 Beyond that, I've looked at nothing at 17 the individual level, correct. 18 BY ATTORNEY THEODORE: 19 Q. Okay. And you also have not looked at anything 20 at the aggregate level as to whether black 21 voters prefer Democrats for reasons relating to 22 the race of the voter even if not the race of 23 the candidate. Is that fair? 24 ATTORNEY McKNIGHT: Objection; form. 25 THE WITNESS: Again, except to the</p> <p style="text-align: right;">250</p>	<p>1 another. If the preference has to do with race 2 itself, then I think we would -- it would be 3 reasonable to expect that we would see a 4 difference in preferences for black candidates 5 over white candidates among black voters or for 6 white candidates over black candidates among 7 white voters. 8 To the extent that we don't see that, 9 then what we're saying is the extent to which 10 race itself is implicated, we don't see any 11 evidence of that. 12 BY ATTORNEY THEODORE: 13 Q. And again, when you refer to race itself in 14 that -- in that answer, you're referring to the 15 race of the candidate? 16 A. Because that's the measure that we have, right. 17 We're comparing voter preferences to across 18 candidates and the information we have to the 19 race of the candidate, which is important. 20 It's -- I mean, it's the other important 21 totality factor. 22 So, yes, we have that information. We 23 learn a lot from seeing that. We don't learn 24 what other -- sort of what sort of policy things 25 might buttress or reduce party preferences, but</p> <p style="text-align: right;">252</p>

<div><div>1</div><div>again, this is the analysis we have and this is</div><div>2</div><div>what Dr. Collingwood's analysis demonstrates.</div><div>3</div><div>ATTORNEY THEODORE: Okay. I have no</div><div>4</div><div>further questions.</div><div>5</div><div>[SIGNATURE RESERVED]</div><div>6</div><div>[DEPOSITION CONCLUDED AT 5:16 P.M.]</div><div>7</div><div></div><div>8</div><div></div><div>9</div><div></div><div>10</div><div></div><div>11</div><div></div><div>12</div><div></div><div>13</div><div></div><div>14</div><div></div><div>15</div><div></div><div>16</div><div></div><div>17</div><div></div><div>18</div><div></div><div>19</div><div></div><div>20</div><div></div><div>21</div><div></div><div>22</div><div></div><div>23</div><div></div><div>24</div><div></div><div>25</div><div></div></div> <div>253</div>	<div><div>1</div><div>ACKNOWLEDGEMENT OF DEPONENT</div><div>2</div><div></div><div>3</div><div>I, DR. JOHN ALFORD, declare under the penalties of</div><div>4</div><div>perjury that I have read the foregoing pages, which contain</div><div>5</div><div>a correct transcription of answers made by me to the</div><div>6</div><div>questions therein recorded, with the exception(s) and/or</div><div>7</div><div>addition(s) reflected on the correction sheet attached</div><div>8</div><div>hereto, if any.</div><div>9</div><div>Signed this the       day of       , 2024.</div><div>10</div><div></div><div>11</div><div></div><div>12</div><div>DR. JOHN ALFORD</div><div>13</div><div></div><div>14</div><div></div><div>15</div><div></div><div>16</div><div></div><div>17</div><div></div><div>18</div><div></div><div>19</div><div></div><div>20</div><div></div><div>21</div><div></div><div>22</div><div></div><div>23</div><div></div><div>24</div><div></div><div>25</div><div></div></div> <div>255</div>
<div><div>1</div><div>COURT REPORTER'S CERTIFICATE</div><div>2</div><div></div><div>3</div><div>I, DENISE MYERS BYRD, Court Reporter, CSR 8340, the</div><div>4</div><div>officer before whom the foregoing deposition of Dr. John</div><div>5</div><div>Alford was conducted, do hereby certify that the witness's</div><div>6</div><div>testimony was taken down by me in stenotype to the best of</div><div>7</div><div>my ability and thereafter transcribed under my supervision;</div><div>8</div><div>and that the foregoing pages, inclusive, constitute a true</div><div>9</div><div>and accurate transcription of the testimony of the witness.</div><div>10</div><div>Before completion of the deposition, review of the</div><div>11</div><div>transcript [X] was [ ] was not requested. If requested, any</div><div>12</div><div>changes made by the deponent (and provided to the reporter)</div><div>13</div><div>during the period allowed are appended hereto.</div><div>14</div><div>I further certify that I am neither counsel for,</div><div>15</div><div>related to, nor employed by any of the parties to this</div><div>16</div><div>action, and further, that I am not a relative or employee of</div><div>17</div><div>any attorney or counsel employed by the parties thereof, nor</div><div>18</div><div>financially or otherwise interested in the outcome of said</div><div>19</div><div>action. Signed this 8th day of October 2024.</div><div>20</div><div></div><div>21</div><div></div><div>22</div><div>Denise Myers Byrd</div><div>23</div><div>CSR 8340, RPR</div><div>24</div><div></div><div>25</div><div></div></div> <div>254</div>	<div><div>1</div><div>ERRATA SHEET</div><div>2</div><div>Case Name: Pierce v The NC State Board of Elections</div><div>3</div><div>Witness Name: Dr. John Alford</div><div>4</div><div>Deposition Date: Thursday, September 19, 2024</div><div>5</div><div></div><div>6</div><div>Page/Line      Reads                      Should Read</div><div>7</div><div>____/____ _____  _____</div><div>8</div><div>____/____ _____  _____</div><div>9</div><div>____/____ _____  _____</div><div>10</div><div>____/____ _____  _____</div><div>11</div><div>____/____ _____  _____</div><div>12</div><div>____/____ _____  _____</div><div>13</div><div>____/____ _____  _____</div><div>14</div><div>____/____ _____  _____</div><div>15</div><div>____/____ _____  _____</div><div>16</div><div>____/____ _____  _____</div><div>17</div><div>____/____ _____  _____</div><div>18</div><div>____/____ _____  _____</div><div>19</div><div>____/____ _____  _____</div><div>20</div><div>____/____ _____  _____</div><div>21</div><div>____/____ _____  _____</div><div>22</div><div>____/____ _____  _____</div><div>23</div><div></div><div>24</div><div></div><div>25</div><div>Signature                      Date</div></div> <div>256</div>

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